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Manual of
Navigation Laws

An Historical Summary of the Codes of the Maritime Nations

Edwin M. Bacon, A. M.

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the Systems of All Nations

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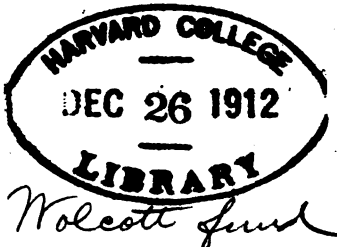

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PREFACE

THIS compact book, treating a cognate subject, is offered as a companion to the "Manual of Ship Subsidies," published in 1911. The author's intent has been to assemble in concise form data covering the inception, growth, and readjustment of the Navigation Codes of the principal maritime nations, and in a rapid historical survey to present the information that one who would be fully informed should have upon the whole question of the theory and the workings of the policies of competing nations in their efforts to protect and upbuild their merchant marine. Like the "Manual of Ship Subsidies," this work is an impartial and unprejudiced presentation of the facts drawn from the records or from authoritative sources. In this as in the previous essay the author's steadfast aim has been to furnish an informing manual for ready reference, free from theories or opinions.

The greater space is naturally accorded to the narrative of the rise and development of the American Navigation Code, and an exhibit of its present status; while the history of the "Maritime Charter of England," now a closed chapter, is given in larger detail than is that of the Codes of other foreign nations, since that Code was the model upon which all others were more or less fashioned.

As in the Ship Subsidies manual, care has been taken to point in footnotes to the documents, records, and authorities, by volume and page, from which the data have been drawn, and to indicate where may be found the fuller text or statement of acts, agreements, or proceedings.

E. M. B.

BOSTON, Massachusetts, *February, 1912.*

Manual of Navigation Laws

CHAPTER I

INTRODUCTORY

NAVIGATION Laws are broadly defined as measures of preference and exclusion by which maritime nations endeavor to protect their native, or national, ships in the carrying trade of the sea against foreign competition, and to exclude foreign ships from participation on equal terms with their own marine in their coastal trade or that of the colonies or possessions they may have. These laws are a branch of, though distinct from, the maritime code which governs the usages of the sea.

They originated with the mediæval peoples navigating the Mediterranean. In their development they have comprised governmental decrees, edicts, proclamations, acts of legislative bodies, ordinances, regulations, rules. They have defined what shall constitute a native, or national ship, entitled to fly the nation's flag; the way in which such ships must be manned: wholly or in major part by citizens or subjects of the nation; the manner of the registration of ships; the privileges which national ships shall enjoy over foreign ships in the nation's commerce; the conditions under which foreign ships may be permitted to engage in its trade as importers or exporters; the relation of foreign ships to its coastal trade. They have also established discriminations against foreign ships in the imposition of tonnage dues and impost taxes; and have prescribed penalties and punishments for the infractions of the Code.

The earliest known Navigation Laws evolved from the ancient Maritime Codes, and date back in the thirteenth

century. The first act of record appears to have been a Barcelonian law. As Macpherson chronicles,* about the year 1268 James I, King of Aragon and Count of Barcelona, "being desirous of giving a preference to the shipping of his own subjects," issued an edict prohibiting all foreign vessels from loading at Barcelona for Alexandria, Ceuta, in Barbary, or other foreign ports, if there were any vessel belonging to Barcelona capable and ready to perform the voyage. By the same law foreigners were prohibited from taking wine on board ships at Barcelona without permission of the citizens. This law Macpherson says was more strictly enforced in the year named – 1268.

The Venetians early had restrictive acts. It was the general policy of the Italian republics to throw various difficulties in the way of foreign shipping in the Mediterranean commerce which they would control.† Laws in force in Venice in the fourteenth century levied differential duties upon certain goods imported in foreign vessels. In some cases, says Lindsay,‡ the ships of foreign nations were not allowed to enter the ports of Venetia under any circumstances. The policy of her merchants was to monopolize intercourse with foreign countries in their own ships.

Spain, France, and the Hanseatic League followed with similar codes, all prohibiting the entry to their dominions of foreign goods except in their own ships. England came in 1381 with her initial act, ordaining that the King's subjects freight only English ships for or from the realm, on penalty of forfeiture of ship and cargo: the nucleus of the "Maritime Charter" of nearly three centuries later, which held for two hundred years. In the sixteenth century other nations retaliated or discriminated against England with restrictive codes similar to hers.

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*David Macpherson, "Annals of Commerce," vol. I, p. 387.

†W. H. Lindsay, "History of Merchant Shipping," Vol. I, pp. 378, 472.

‡Same, Vol. I, p. 479.

The United States laid the foundation of her Navigation Code with early enactments by the First and Second Congresses under the Constitution, after the English model. These initial acts levied discriminating tonnage dues and impost taxes to such an extent as practically to exclude foreign shipping from her commerce.

CHAPTER II

THE ENGLISH SYSTEM

ENGLAND'S initial act of 1381 was passed by Parliament, as declared, "in order to augment the navy," then said to be greatly reduced. This in fact meant the augmentation of the mercantile marine, for at that time, and long after, the navy was composed of the merchant ships. Whenever war broke out all trading vessels of the realm, of whatever nature, were impressed into the service with all their men. Forty years earlier, in 1340, the tiny navy of that day having been cut down by war, a forerunner of this act was instituted when the king, then Edward III, promulgating the doctrine that "the security of the kingdom depended upon the vessels being kept in the hands of his own subjects," ordered the sheriffs of the maritime shires to make proclamation, "That no person should sell or give away any vessels to a foreigner upon any condition." This same principle,—British ownership of ships engaged in the nation's commerce and constituting the nation's navy,—underlay the act of 1381, and the Navigation Code that developed from it.*

It was the conviction of the advocates of the act of 1381 that its effect must be to "awaken industry," "increase the wealth of the inhabitants," and "extend their influence." But it fell short of these results. It was soon found particularly to embarrass English merchants in their oversea operations.† Accordingly the next year, 1382, the act was amended with this proviso: "That English merchants, being in foreign ports, and not finding any sufficient vessels there, might ship their goods on board foreign vessels." Apparently the enforcement of the act with respect

*Macpherson, Vol. I, p. 528.

†Lindsay, "Our Navigation and Mercantile Marine Laws," p. 2.

to export shipping then lapsed, for eight years afterward it was enacted (1390), "That the merchants of England should export their merchandise in English vessels only; and the owners were desired to carry them for reasonable freights."* Just what might constitute "reasonable" rates was, apparently, left for the shipowners to determine as they willed.†

During the greater part of the fifteenth century, while the Navigation Act is supposed to have remained practically in full force, it appears, from the frequent mention of English property on board of foreign vessels, to have received little attention.‡ But in 1485, the first year of Henry VII, it was reinvigorated, and now was added to the Code the principle that a majority of the crew of an English ship must be English subjects. "Considering the danger to be apprehended from a decay of the navy and the seamen being unemployed," as was explained, Parliament enacted a prohibition of the buying or selling of "any wine of the growth of Guienne, or Gascoigne, in England, Ireland, Wales, Calais, or Berwick," unless it be imported in a vessel belonging to England, Ireland, or Wales, and navigated principally by natives of them, or of Calais which then the English held. This law was to be in force only till the next Parliament.** Four years later (1489) its principles were embodied in this enactment: "That no wines of Guienne or Gascoigne, nor woad [wood] of Tholouse, be imported into England, Ireland, Wales, Calais, or Berwick, unless in vessels belonging to the king or some of his subjects of those territories, and navigated by seamen of whom the greater part be natives of the same territories." At the same time the king's subjects were prohibited from shipping goods to England or Wales on board any vessel owned by a foreigner unless when sufficient freight could not be found in English ships. Permission was given to foreign vessels laden with wine or "woad" if driven into English ports by storm or by enemies, to sell as

*Stat. 1, Ric. 11, c. 8. Also Macpherson, Vol. I, p. 594.
†Macpherson, Vol. I, p. 602.
‡Same, p. 622.
**Same, p. 706.

much of their cargo as would pay for necessary provisions or for repairs, "and no more."*

Thus early were established in the English Navigation Code four principles which remained the leading principles of all subsequent navigation acts of the realm till the abolition of the restrictive features of the Code in the middle of the nineteenth century.

These were: (1) That certain goods must be imported and exported only in British ships; (2) that these ships must be manned by a majority of Englishmen; (3) that these enactments were for the increase of the mercantile navy; (4) that the mercantile navy, in return, was to be subject to impressment for war service.†

In the first year of Elizabeth, 1558, the Code was modified by an act repealing, for a term of five years, the statute prohibiting the importation and exportation of merchandise in any but English ships. The reasons advanced for this action were thus stated: "That since the making of the said statutes other sovereign princes, finding themselves aggrieved with the said acts, as thinking that the same were made to the hurt and prejudice of their country and navy, have made like penal laws against such as should ship out of their countries in any other vessels than of their several countries and dominions: by reason whereof there hath not only grown great displeasure betwixt the foreign princes and the king of this realm, but also merchants have been sore grieved and endangered."‡

The repeal, however, was loaded with restrictions. Since "sundry of the queen's subjects" were found frequently to enter the merchandise of aliens, which was liable to double duties, in their own names, "whereby the queen is defrauded in her revenue," it was enacted, "That whoever shall, in time of peace, and when there is no restraint made of English ships, either embart or unlade any merchandize (masts, raffe, pitch, tar, and corn excepted) out of or into any for-

*Acts 4, Henry VII, c. 10. Also Macpherson, Vol. I, p. 712.

†John Lewis Ricardo, "The Anatomy of the Navigation Laws," p. 10.

‡Macpherson, Vol. II, p. 124.

eign bottom or ship, and whereof the master and the major part of the sailors are not English subjects, shall answer and pay for the said merchandize the like custom or subsidy as aliens do.'' Exceptions to this rule were made in favor of two societies or corporations of merchants-adventurers, who were authorized to lade their goods on foreigners' ships '' provided there be not English ships sufficient in number for such embarkations,'' without being for that cause subject to aliens' duties. Also, in favor of the merchants of Bristol, who had '' of late sustained great losses at sea from enemies who have taken all their best ships and much substance,'' so that they were unable to provide sufficient ships of their own within the time-limit of this act. These merchants were allowed, '' if there be no English shipping sufficient within forty miles of Bristol,'' to freight on foreign ships without liability to the double duties.*

In 1563 the coastwise trade was protected by a clause in a new law entitled '' Constitutions for the maintenance of the Navy '' etc., which ordained, '' That no foreign ships shall carry any goods coastwise from one English port to another.'' In 1566 an act made it unlawful for the English Russian Company, monopolizing the then new Russian trade with England, to export or import their goods in any but English ships and with a majority of English mariners, '' on pain for every offense of forfeiting £200, one moiety to the queen,'' the other to go to '' any port-town having a decayed harbour that will sue for it.'' † In 1593 similar restrictions were put upon the Turkey trade.‡

No further extension of moment in the Code was made till near the middle of the seventeenth century, when the first restriction was placed on the commerce of the British American colonies. This was an ordinance of the '' Long Parliament,'' in 1646, when Charles I's unhappy reign was nearing its tragic end. It inhibited the shipment of the produce of these plantations in any but English ships, though permitted to go to other countries.

*Macpherson, Vol. I, pp. 124-125.
†Same, p. 193.
‡Macpherson, Vol. II, p. 201.

It recited: "That whereas the several plantations of Virginia, Bermudas, Barbadoes, and other places of America, have been much beneficial to this kingdom, by the increase of navigation, and of the customs arising from the commodities of the growth of those plantations, imported into this kingdom; and as goods and necessaries carried thither from hence have not hitherto paid any custom, for the better carrying on of the said plantations, it is now ordained by the lords and commons in Parliament that all merchandize, goods, and necessaries for the supportation, use, and expense of the said plantations shall pay no custom nor duty for the same, the duty of excise only excepted, for three years to come, except to plantations in Newfoundland: security being given here, and certificates from thence, that the said goods be really exported thither, and for the only use of the said plantations: provided always, that none in any of the ports of the said plantations do suffer any ship or vessel to lade any goods of the growth of the plantations, and carry them to foreign ports, except in English bottoms, under forfeiture of the before-named exemption from customs." *

Four years later, in 1650, an act was passed by Cromwell's "Rump Parliament" prohibiting all ships of all foreign nations whatever from trading with Virginia, Barbadoes, Antigua, and the Bermudas without a license. This prohibition, however, was a political, not an economic act. It was provoked by the "rebellious attitude" of these colonies in their attachment to the royal family, and by the resorting thither of "disaffected royalists" in foreign ships. It prohibited foreigners not only from trading with but from resorting to these plantations without a license "on any pretext whatever," under forfeiture of ships and goods; and granted permission to all merchant ships as well as national ships-of-war to seize ships and merchandise of their "rebellious inhabitants." †

The next year, 1651, was marked by the framing and passage (October 9) of the "Celebrated Navigation Act," the

*Macpherson, Vol. II, pp. 430-431.

†Same, p. 439.

so called Cromwell Code, the fundamental principles of which held, practically unimpaired, through two centuries.

Though assumed to be primarily for the protection of home shipping interests, this was, like the lesser act of 1650, essentially a political measure. The reasons assigned for it were these: "It had been observed with concern that the merchants of England, for several years past, had usually freighted Dutch shipping for fetching home their own merchandize because their freight was at a lower rate than the English ships. The Dutch shipping were thereby made use of even for importing our own American products, whilst our own shipping lay rotting in our harbours: our mariners also, for want of employment at home, went into the service of the Dutch. To these considerations were superadded the haughty carriage of the States of Holland upon the Parliaments' demand of satisfaction for the murder of the envoy, Dr. Dorislaus, at the Hague: and for the insult put upon the ambassador they sent afterwards, whose proposals the States also had received coldly."* It was, in fact, a move in the project of Sir Harry Vane to free the Parliament from the control of the army by raising in the navy a force devoted to the House, which would eclipse the army's achievements by greater triumphs on the sea.† By striking a fatal blow at the maritime commerce of Holland, then, with the practical monopoly of the carrying trade, at its zenith, the quarrel with the States would be brought to issue in war, and the navy's opportunity would come.

Accordingly it ordained: "That no merchandize, either of Asia, Africa, or America, including also our own plantations there, should be imported into England or Ireland in any but English-built ships, and belonging either to English or to English-plantations subjects, navigated also by English commanders, and three-fourths of the sailors Englishmen: excepting, however, such merchandize as should be imported directly from the original place of its growth or manufacture in Europe, solely. Moreover, no fish should

*Macpherson, Vol. II, pp. 442-443.

†John R. Green, "A Short History of the English People," p. 579.

thenceforward be imported into England or Ireland, nor exported from thence to foreign parts, nor even from one of our own home ports to another, but what is caught by our own fishers only.''*

The act had the expected result in grievously affecting the Dutch, they having little or no produce of their own to export. The hot naval war that followed (1652-54), with alternate victory and defeat on either side, finally ended with the acknowledged English supremacy in the seas, or the waters of the Channel. Meanwhile English merchants complained that there were not enough home ships to import from all parts commodities which the people needed or desired, and that it was a hardship to be deprived from receiving such supplies or merchandise from other nations which only could, and did, till this law was enacted, import them. But these complaints the government ignored or overruled.†

Upon the restoration of Charles II, in 1660, this act of the Commonwealth was embodied in one of the earliest acts of the new Parliament; and this act of Charles II, with supplementary statutes added during the next two or three years, comprised that Code then popularly christened the ''Maritime Charter of England.'' The restrictive clauses may thus be summarized, paraphrasing Macpherson's statement.‡

I. Prohibiting import and export of goods or commodities into or from any of the king's lands, islands, plantations, or territories in Asia, Africa, or America, in any other than English, Irish, or plantation-built ships, and whereof the master and at least three-fourths of the mariners shall be Englishmen; under penalty of forfeiture of ship and goods.

II. Permitting none but national-born or naturalized subjects to engage in the occupation of a merchant or factor in the places named above, under forfeiture of goods and chattels. (Heretofore, as Macpherson explains, it had been common for Dutch merchants to act as factors or agents in the English colonies.)

III. Prohibiting the importation into England of goods of the growth, product, or manufacture of Asia, Africa, or

*Macpherson, Vol. II, p. 443.
†Same, p. 444.
‡Same, pp. 484-486.

America, in any but such ships as do truly belong to English people either in England or in the king's lands or plantations in those parts, and navigated as provided in the first clause.

IV. Prohibiting importation into England, Ireland, "or Jersey or Guernsey" of foreign products or goods in other than English-built and English-manned ships, and from any other place but that of their growth, production, or manufacture, or from those ports where they could only be, or usually had been brought: under penalty of forfeiture of ship and goods.

V. Prohibiting the carriage of goods or provisions coastwise from one English port to another on vessels whereof any "stranger not naturalized" is owner in whole or in part, or not navigated by Englishmen as provided in Section One.

VI. Prohibiting the importation of Russian goods, also certain enumerated commodities of Europe, and Turkish produce, in any but English-built and English-manned ships, or in ships of the country in which the named goods could only be or most usually were first shipped for transportation and whereof the master and three-fourths of the crew were of that country or place.

VII. Declaring all the foreign goods before named henceforth imported on ships not belonging to England, and not navigated as aforesaid, to be deemed alien ships and required to pay all strangers' customs and port-dues.

VIII. Excluding a foreign-built ship from the privileges of an English ship till the owners make it appear that they are not aliens. They must swear that they gave a valuable consideration (to be specified) for such ship, and that no foreigner has any share in it: of all which a certificate shall be produced and a register kept.

IX. Prohibiting the shipment of sugar, tobacco, cotton-wool, indigo, ginger, fustic or other dyeing woods, of the growth or manufacture of the British Asian, African, or American colonies, from the colonies to any place but to England, Ireland, or to some other of his majesty's plantations, there to be landed: under forfeiture of ship and cargo. The owners of the ships were required to give bonds at their setting out for their due performances under the act.

By a supplementary statute, in 1663, the Code was made stricter with regard to the plantations trade. This enactment prohibited the importation of merchandise of the produce of Europe into any of the English plantations except Tangier, in any but British-built and British-manned ships, lade in England, and shipped directly to the plantation from England "and no where else": on forfeiture of ship and lading. It also ordained that none of the products of the

English plantations (*viz.*, sugar, tobacco, cotton-wool, ginger, fustic and other drugs) be carried anywhere except to other plantations till they be first landed in England: under like penalties. From these restrictions, however, were exempted exports of salt for the fisheries of New England and Newfoundland.* Ireland, it will be observed, does not appear in this act. Thus, she was excluded from all trade with the colonies, and the restriction held against her for one hundred and fifteen years.†

Twelve years later, in 1675, these and other provisions of the Code being "sometimes violated," King Charles issued a proclamation prohibiting the importation into the American plantations of any European merchandise but what should be laden in England, and directing the strict execution of other branches of the act, with respect to America.‡ Still, evidently, violations continued or in time were renewed, for in 1696, "in order to prevent frauds and abuses in the plantation trade," Parliament enacted that all ships trading to or from the plantations should not only be English-, Irish-, or plantation-built, but that their cargoes should be either English, Irish, or plantation property, and registered as such.**

From time to time the Code was relaxed in other respects: to favor special conditions or interests. Thus, in 1672, "since English harpooners could not now be got," whaling ships, provided they be English-built, were permitted to be manned one-half, instead of three-fourths, by Englishmen; and two decades later, in 1693, the want of harpooners still being serious, the proportion of Englishmen required was reduced to one-third.†† In 1704 the exportation of Irish linen was permitted from any port of Ireland direct to any of the plantations; but the carrying ships must be English-built

*Macpherson, Vol. II, p. 510.

†Till 1778: a statute of this year readmitting her, with permission to export her produce and manufactures, except certain enumerated articles, to the British settlements in America and Africa.— Macpherson, Vol. III, p. 623.

‡Macpherson, Vol. II, p. 574.

**Same, p. 688.

††Same, p. 654.

and English-manned. This concession was made on the ground that "the Protestant interest in Ireland ought to be supported by giving the utmost encouragement to the linen manufactures of that Kingdom," which was principally carried on in the Province of Ulster, and adjacent parts where the Protestants were the majority of the people.*

In the fifth of Anne the statutes confining the navigation and trade to and from the British American colonies solely to English, Irish, or American subjects, were confirmed; and again, with more stringent enactment, in George II's reign, when foreign or foreign-owned ships were continuing to break into this profitable traffic. In the fifteenth of George II (1742), "for farther regulating the plantation-trade," Parliament enacted that "all ships trading from Britain and Ireland, and also all the ships of our American plantations," be registered as British-, Irish-, or plantation-built, or else prize ships made free; that a certificate of register be always ready in the master's hands; and that the master of every ship arriving in America take oath of all conditions necessary for ascertaining such ship to be a qualified one for trading thither, and solely the property of British, Irish, or American subjects.† It had been found that certificates of register had not infrequently been sold to foreigners and their ships thus fraudulently admitted to the colonial trade:‡ hence the latter clause.

In 1766 the principle of exclusion of foreign ships from the plantations trade which had been maintained unimpaired for a century, was broken into with the enactment of a so-called "Free Port Act" with relation to the West Indian trade. This statute permitted the importation, in foreign one-decked vessels, of the produce (with certain exceptions), but not the manufactures, of foreign (that is other than British) colonies in America, into certain specified ports of San Domingo and Jamaica; and the reëxportation in the same class of foreign vessels from the same ports, to foreign

*Macpherson, Vol. II, pp. 731-732.

†15, 16, George II, c. 31. In Macpherson, Vol. III, pp. 233-234.

‡Macpherson, Vol. III, p. 234.

places, of any goods legally imported into those islands from England, Ireland, or the British American possessions.* The intent of this act, so far as England was concerned, was said to have been the legalizing of a profitable illicit trade at that time carrying on between her West Indian Islands and the Spanish colonies.† The act practically held, through reënactments, and with the leaving out from its privileges of one or the other island at different short periods, till after the American Revolution. In 1787 an act replacing it extended the privileges to certain ports of Granada and the Bahamas, besides San Domingo and Jamaica, for the carriage of certain enumerated articles of the growth or production of the foreign colonies, and with various restrictions. In 1790 restrictions as to tonnage were removed. In 1792 the act of 1787 was made perpetual. The same year the king was empowered to appoint free ports in the Bahamas and in Bermuda for the importation of foreign sugar and coffee. Subsequent acts added other ports to the list of free ports. In 1805 all of these acts were repealed, and the law then existing was consolidated into a new statute. In 1808 the list of enumerated articles for the free ports was extended. In 1810 the restriction as to one-decked foreign ships was removed.‡

None of these privileges was allowed to ships of the new United States. After the independence of the colonies the British Navigation Laws were brought into force against the new nation as a foreign state; and the more stringently because of their separation from the mother country. After its recognition the king was empowered to regulate the trade with the United States by an Order in Council. In 1783, by such order, American ships were wholly excluded from the British West Indies, and various staple productions of the United States, particularly fish, beef, pork, butter, and lard, were prohibited from carriage there even in British bottoms.**

*6 Geo. 3, c. 49. Ricardo, Appendix, p. 306.

†Ricardo, Appendix, p. 306.

‡Same, pp. 306-307.

**John Macgregor, "Commercial Tariff and Regulations . . . Part 15. United States of America," p. 1406.

In 1788 the trade between the United States and the remaining British possessions in America was placed under permanent regulations by an act embracing these restrictions:*

(1) That no goods be imported into the British West Indies from the United States except some thirty enumerated articles being of the growth, produce, or manufacture of the United States: and these only by British subjects and in British ships.

(2) That such enumerated articles be not imported into the British West Indies from the foreign West Indies; governors, however, might relax this prohibition in cases of public emergency.

(3) That such goods as might by law be exported from the West Indies to places in Europe, as also certain other named articles (including sugar and coffee) might be exported therefrom to the United States, but only by British subjects and in British ships.

(4) That no goods whatever be imported from the United States, into New Brunswick, Nova Scotia, Cape Breton, St. John's, or Newfoundland, nor by sea into the province of Quebec, except in cases of emergency.

In 1787, 1790-1799 the United States retaliated with the adoption of a Navigation Act of her own, modelled closely after the British Code. Thus the prohibition of the importation into England of the produce and manufactures of the United States in any but British ships was met by the counter prohibition of the import of English goods into the United States in any other than American ships. Thereafter for a quarter century the ships of both countries often crossed the ocean one way in ballast.†

Up to 1797 the trade between the two countries continued to be regulated by Orders in Council. That year an act was passed to carry out a commercial treaty concluded in 1796, by which the barriers were so far removed as to permit the

*28 Geo. 3, c. 6. Ricardo, Appendix, pp. 311-312.

†"American ships came across the Atlantic to Liverpool in ballast, having in their wake English ships with rice, cotton, and tobacco. English ships crossed the Atlantic to New York in ballast, having in their wake American ships laden with calicoes, cutlery, hardware, earthenware, and iron. The which state of things, more or less, lasted for eight and twenty years." — Ricardo, p. 37.

bringing into England direct from the United States articles of her growth, produce, and manufacture "not being such as were generally prohibited by law," in either British or American ships.* By subsequent acts the United States was permitted to trade with the British East Indies; and her trade with the British North American possessions was further regulated.†

At length, another break in the Code was made, with the adoption of the reciprocity policy. In 1815 a convention was entered into with the United States providing for a "reciprocal liberty of commerce" between "all the territories of his Britannic majesty in Europe" and the United States: ‡ under which American ships could come into England with their cargoes, and British ships clear outward with cargoes for America. Similar concessions were made with Portugal under the "most favored nation" treaty. In 1822 the trade was opened to American ships, with enumerated articles of the produce of the United States, to certain ports of the West Indies and other British possessions in America.** In 1823 Prussia, threatening retaliatory measures, demanded a reciprocity similar to that with the United States. Denmark and Sweden followed with like requests. In 1824 and 1825 the reciprocity policy was fully adopted, in general acts.†† By these the king was empowered, through an Order in Council, to admit ships of any foreign state to British ports on payment of such duties as were then charged on British vessels, provided that such state admit British ships to its ports on the same conditions.‡‡ In 1825 the limitations of the right of exportation from the colonies in foreign ships were removed, and freedom of trade to the colonies conceded.§

The Code was now materially liberalized. In 1833 the various statutes, with some alterations in the older ones,

*37 Geo. 3, c. 97. Ricardo, Appendix, p. 312; also p. 316.
†Ricardo, Appendix, pp. 312-313.
‡Macgregor, p. 1356.
**Ricardo, Appendix, p. 313.
††4 Geo. IV, c. 77; 5 Geo. IV, c. 1.
‡‡Ricardo, p. 39.
§Same, Appendix, pp. 309, 313.

were consolidated in one act; and in 1845 this in turn, with amendments in a few unimportant particulars, was consolidated under the same title,* — the one hundred and forty-fourth, according to one count, of the various acts to amend the original "Maritime Charter" of 1660.† Also, the laws relative to the registration of British ships were similarly consolidated and reconsolidated.‡ Under the latter act a British vessel was generally defined as a ship owned by British subjects, navigated by a British master and a three-fourths British crew, and of the build of a part of the British dominions.**

In 1849 the long step toward freedom of navigation was taken with the passage of the "Act for the Repeal of the Navigation Laws," sweeping away the restrictive enactments so far as importation and exportation went; †† and in 1851, the final step, with an act throwing open the coasting trade as well as to foreign ships.‡‡

Thus was reversed the policy which had held with more or less vigor through five centuries, and the "Great Maritime Charter of England," the model for subsequent restrictive maritime codes of other nations, became past history.

The only vestiges of the abandoned Code still remaining are seen in the provisions of the existing Merchants Shipping Act relative to the registration of British ships, and the qualification of ownership of such ships, which require that the ship, above a certain tonnage, in order to possess the right to fly the British flag, must be registered and be wholly British owned. Trade is free from any restrictions

*3 & 4 Wm. IV, c. 54. 8 & 9 Vic., c. 88. Ricardo, p. 65; Appendix, pp. 223-231.

†Ricardo, p. 65. Up to 1821, according to report made to the House of Commons, no fewer than 2,000 laws had been enacted at different periods for the protection, encouragement, or regulation of British commerce.— David A. Wells, "Our Merchant Marine," p. 96.

‡8 & 9 Vic., c. 89. Ricardo, Appendix, pp. 232-259.

**Ricardo, Appendix, p. 325.

††12 & 13 Vic., c. 29.

‡‡17 & 18 Vic., c. 3.

as to nationality of vessel, between the United Kingdom and all of the British colonies and possessions; in the inter-colonial traffic; on all the coasts of the United Kingdom; on those of the crown colonies or dependencies; while most of the self-governing colonies allow similar free trade on their coasts. Canada was the exception to this rule, till 1911, when she also admitted foreign shipping to her trade.

CHAPTER III

THE FRENCH CODE

THE earliest Navigation Laws of France sprang from the ancient maritime code known as the "Roles ou Jugemens d'Oleron," assumed to have comprised the first laws enacted for the regulation of affairs on the "great ocean seas," or the Atlantic, the earlier sea-laws having had reference to the Mediterranean. Both date and authorship of these "Laws of Oleron" are uncertain. They seem to have been in force in the latter part of the twelfth century, if not earlier. They have been claimed for different nations and tribes. An early authority * credits them to the inhabitants of the island of Oleron, off the west coast of France, great sailors in mediæval times. Others hold them to have been distinctly of French origin; others still of English. Documentary evidence, however, shows them to have been introduced to England from France, the earliest version known in England having been brought thence late in the twelfth century.†

Whatever their origin they early appeared in the codes of France, England, and the Low Countries, and were transplanted into Spanish. By them apparently at first were determined the controversies on the west coast of France, where, in the Middle Ages, the people, with the exception of those of Marseilles, were more notorious as wreckers than as honest seamen.‡

The earliest definite French Navigation Law of record is a sixteenth century enactment, promulgated in or about 1560,

*Guy Miège, "The Ancient Sea-laws of Oleron, Wisby, and the Hanse-towns," 1686.

†Lindsay, Vol. I, p. 379, *note*. Pardessus, "Collection des lois Maritimes." Sir Travers Twiss, "Black Book of the Admiralty," Vol. I. Introduction, pp. lvii-lviii.

‡Lindsay, Vol. I, p. 470.

in the time of Charles IX, during the regency of his mother, Catherine of Medicis. It was rigidly restrictive, not only excluding foreign vessels from the ports of the realm for the outward carriage of any kind of merchandise, but forbidding the king's subjects to freight foreign ships in the French ports under any circumstances. It seems, however, to have been imperfectly executed, and in course of time fell into desuetude.*

Thereafter, apparently, nothing approaching a regular system was formulated for a century. Then, early in Louis XIV's actual reign, beginning with the death of Cardinal Mazarin in 1661, a Code was framed, modelled after the English system, the avowed object of which, as of that, was to build up a national mercantile marine and navy combined. This Code Louis's great minister, Jean Baptiste Colbert, perfected in or about 1664 as part of his colossal scheme for the enrichment of the country through fiscal reforms and the development of commerce and industries, by the crippling of neighboring nations.

At that time the French had very few ships of their own and few mariners. Most of their ocean traffic, even the transportation of goods from one French harbor to another, was done by Dutch ships: while their seamen were largely employed in foreign service. Colbert's measures at first included, together with high premiums for home shipbuilding, a duty on foreign shipping which would result in the virtual exclusion of ships brought from abroad. And later (1669) French sailors were prohibited from leaving the kingdom and taking service in foreign countries under penalty of death.† A fleet of national ships resulted from Colbert's exertions. But after his death (1683), it fell away, and the Dutch regained the carrying trade of France.‡

Still the Code was stiffened in the latter years of Louis XIV and early in the reign of Louis XV, by ordinances and regulations, particularly defining a French ship, or a ship qualified for admittance to the privileges of a French ship.

*Lindsay, Vol. III, p. 423.
†A. J. Sargent, "The Economic Policy of Colbert."
‡Same.

Thus, in 1681, it was ordained that such vessels must be wholly owned by French subjects, and the names of all the owners registered. For every deviation from this ordinance a penalty of a thousand livres was prescribed. Punishments, too, were imposed upon a captain who should navigate a vessel of alien ownership under the French flag. No alien was to command a French ship. Half a century later (1727) even a French subject who had married an alien was thus debarred. The captain and at least two-thirds of the crew must be French subjects. Foreign-built ships might be acquired by French subjects and be given the French character, but only upon certain specific conditions: declarations as to the ships' dimensions, the place of their building and their builders, and registration of the owners' names with the contract of sale. By later decrees the "droit de tonnage" was levied on foreign vessels. For a considerable part of the eighteenth century absolute prohibition ruled against all foreign vessels engaged in the carrying trade between the ports of France.

The regulations excluding foreign ships from the colonial trade were the most stringent. Till far into the nineteenth century the carrying of all goods between the colonies and the mother-country was reserved exclusively for the shipping of France. By a decree of 1727 it was ordained that "no foreigners shall land with their ships . . . in the ports, bays, or harbors of the French colonies and islands, or navigate within one league round the said colonies and islands, under penalty of confiscation of their vessels and cargoes, and a fine of four thousand livres, jointly and severally, upon the master and his crew." In time these laws proved disadvantageous to both colonies and mother-country. They bore with especial hardship on certain of the colonies after the loss of Canada, and a few years afterward of Louisiana. These colonies had carried on a flourishing trade with the Antilles, and, with the loss of them to France, the islands were deprived of many commodities essential to their comfort and well-being. Consequently, to remedy this evil, the law was so relaxed as to open some of their ports to foreign ships for the import of certain enumerated

articles, and the export of such of the goods produced by the islands as would not find a sufficient market within the French dominions.*

The Code was made more stringent by the Revolution, with further inhibitions of the use of foreign ships, stricter requirements for ships entitled to fly the French flag, and completer exclusion of foreigners from French commerce. A decree of 1791 (May 13) prohibited from its date the acquisition by French subjects of any vessels of foreign build. A decree of 1793 (September 21) prohibited the importation into France or her colonies and possessions of all foreign commodities except directly in French vessels, or in vessels belonging to the inhabitants of the countries in which the articles imported grew, were produced, or manufactured, or from the ordinary port of sale or exportation. All the officers and three-fourths of the crews of such foreign ships must be natives of the country of which the ships bore the flag, under penalty not only of confiscation of ship and cargo, but of a fine of three hundred livres in addition: the fine enforceable, under pain of imprisonment, jointly and severally, against the owners, consignees, and agents of the ship and cargo, as well as against the captain and mate. Another article of the same decree prohibited the carriage by foreign vessels from one French port to another of any article of the growth, production, or manufacture of France, or of her colonies or possessions, under similar penalties. Another stipulated that only French-built, or colonial- or other possessions-built ships, or ships condemned as prizes or for any infringement of the laws of the state, and French-manned, be allowed the privileges of the French flag. In this law is seen how closely the Convention adopted the principles of the English Navigation Act of 1661.

A second decree of 1793 (October 18) prescribed rules to govern the extent of repairs that might be made on a foreign ship, sold after wreck in French waters, to entitle such ship to sail under the French flag. Also, the amount of repairs

*Lindsay, Vol. III, p. 427.

which a French vessel might have done in a foreign country without forfeiting her national character. Further, it named the conditions under which a French subject residing in a foreign country might own a French vessel; and established a system of tonnage taxes on all vessels entering French ports, excepting French fishing ships, privateers, and French vessels returning from foreign countries. This system comprised a uniform duty of fifty sous per ton on foreign vessels when they discharged their cargoes in French ports, and from three to six sous on French vessels according to their class and the nature of their trading.

Thus the Navigation Code practically stood till the Restoration. Meanwhile, during the wars of the Republic and the Empire, despite the Code, the national mercantile marine had almost wholly disappeared. After the Restoration it revived so slowly that foreign ships had to be depended upon for the ordinary supplies of the French market. Yet, still discriminating in its favor, differential duties were levied on most of the commodities imported in foreign bottoms.

The Restoration government, however, modified the Code in one notable particular. This was in the removal of the prohibition on foreign ships in the "indirect commerce" — the carrying trade between France and other countries. Still privileges were retained for French ships over foreign in this commerce, through the addition of "flag surtaxes" to the ordinary custom duties levied upon the merchandise imported into France in foreign bottoms, and through the tonnage dues to which foreign vessels alone were subjected at all ports of entry except Marseilles, which from the year 1777 had enjoyed a peculiar distinction as substantially a free port. In 1826 the first of a series of treaties of reciprocity with the principal maritime nations was concluded, which established an equality between national and foreign ships for direct exchange: but the surtaxes on the flag were still retained in the indirect commerce.*

*Achille Viallatés, "How France Protects her Merchant Marine," in *North American Review*, January, 1907. Lindsay, Vol. III, pp. 432-433, and Appendix No. 1, p. 563.

With respect to the colonial trade, the policy of exclusion of alien vessels was continued in the main. The three coffee and sugar islands which had remained to France, Bourbon — or Reunion as that island was now called — and the West Indian Guadeloupe and Martinique particularly were most jealously guarded from foreign intrusion. The prohibition against foreign ships approaching the coasts of the colonies and possessions under heavy penalties, was more strictly maintained in these islands than elsewhere: though here even it was not infrequently disregarded.*

So the Code remained, substantially, till the later years of Napoleon III. Then it was radically changed with the elimination in large part of its restrictive features, in accordance with the emperor's inclination toward the adoption by France of the liberal economic policy of England established fifteen years before. A law passed in 1861 (July 3) broke down the barriers which had shut out foreign ships from the three coffee and sugar islands. It opened to ships of every flag the importation of foreign goods into those islands, subject only to special duties varying according to the ports whence the goods were brought and those which they entered; and granted like freedom for the exportation of the goods of the colonies either to foreign countries or to any other colony, provided such colony was beyond the limits of the coasting trade. A subsequent law, of 1866 (May 19) removed the prohibition against French registration of foreign-built ships (this provision, however, not to take effect till six months after the promulgation of the law), and admitted them, fully equipped, upon payment of two francs per ton admeasurement; abolished the flag surtaxes (not to take effect till three years after promulgation); abolished the differential duties on goods imported under a foreign flag, and the lower rate on certain commodities imported from French warehouses under the French flag; and further opened colonial navigation to foreign ships. No change was made with respect to the coasting trade; this alone remained fully secured to the French flag.†

*Lindsay, Vol. III, p. 434.
†Viallatés.

This system, however, continued in operation for a brief period only. It was immediately assailed by the French ship-building and ship-outfitting interests; also by domestic ship-owners. Before a month had passed from the passage of the law of 1866 a qualifying decree (June 8) nullified that act in several important respects.* In 1870 a Parliamentary commission of inquiry took up the matter. With the change of government, early in 1872 (January 30 and February 3) enactments reversed much of the 1866 law. These statutes repealed the articles admitting foreign-built ships to French registry upon payment of two francs per ton, and reimposed the duty of from thirty to fifty francs per ton on foreign ships purchased for French registration; restored a tonnage tax of from fifty centimes to one franc per ton upon vessels of every flag coming from any foreign country, or from the French colonies. The next year, 1873 (July 28 and 31), the flag surtaxes were again abolished. The same year a second parliamentary commission was appointed to study the question in the light of the repeated "grievances of the ship-building and outfitting interests." This commission proposed the adoption of the direct premium, or subsidy system, as an offset to the concessions still left in the amended decrees, and to place these home industries on a "footing of real equality with foreign competition."† Four years later (1877) this proposition was brought before the Chamber of Deputies with the introduction of a direct subsidy measure; and in 1881 a subsidy bill passed the two houses, and France, with her shorn Navigation Code, embarked on the career which, with subsequent acts, brought her the distinction among maritime countries of "the bounty-giving nation par excellence."

France still reserves her home coasting trade to ships of her own flag. With the trade between her Atlantic and Mediterranean seaboards she also reserves that between French ports and Algeria, by agreement with England.‡ All other carrying trade between France and her overseas

*Lindsay, Vol. III, p. 448.

†Viallatés.

‡*London Gazette*, February 28, 1893.

colonies is open to foreign vessels on equal terms with her own. Trade is free between French Guadeloupe, Madagascar, and other island colonies, but other shipping is specially taxed.

Foreign-built ships are admitted to French registration under these conditions: The ship must be owned by a French subject or subjects. If she is the property of a company or corporation the head office of the concern must be in France. She must be manned by French subjects: the captain, officers, and at least three-fourths of the crew French. She loses her French nationality: (1) by repairing or refitting in a foreign country at a cost above six francs per ton, except in case of necessity, as must be shown by a report signed by the captain and officers, approved by the consul or other French official, or by two merchants, according to the facilities of the place where the work is done; (2) by alterations in build, tonnage, or otherwise, without acquiring a new certificate of registry; (3) by sale in whole part, or more than half, to a foreigner.*

*Leopold Goirand, "A Treatise upon French Commercial Law. . . . including the Entire Code of Commerce." 2d edition.

CHAPTER IV

HOLLAND

AT the opening of the fifteenth century the Hollanders were laying the foundation of that commercial importance which afterward was to astonish the world.* By the mid-sixteenth century more vessels were building and equipping in the ports of Holland than in almost all the rest of Europe together. At that time she was employing some eight hundred large merchant ships in the carrying trade, and almost as many stout smaller craft in the herring fisheries on the northern coasts. Hundreds of merchant ships were yearly casting anchor at Amsterdam. Another port, Arnemuyden in Zeeland, was noted for the "immense number of vessels constantly" there. Thence sailed out fleets of from fifty to two hundred ships, besides many single ships trading to and from Antwerp.† At the opening of the seventeenth century Amsterdam had become the commercial emporium of Europe. The United Netherlands were now the first commercial nation in the world, and had attained the acknowledged supremacy of the seas. They were the greatest carriers and the greatest shipowners.

"The Dutch have as many ships and vessels as eleven kingdoms of Christendom, let England be one," wrote Sir Walter Raleigh to James I in 1603.‡ Their own commodities would not lade a hundred merchantmen, yet they sailed annually three thousand ships to all parts of Europe and the east countries. They had one hundred thousand sailors, natives and foreigners, "the boldest, the best disciplined, and the most experienced in the world, whether for peaceful sea-

*Macpherson, Vol. I, p. 619.

†C. M. Davies, "History of Holland," Vol. I, p. 611, *note*.

‡"Observations Concerning the Trade and Commerce of England with the Dutch and other Foreign Nations."

faring or ocean warfare.'' * They gathered and warehoused the commodities of all countries, and redistributed them in their ships. Swarms of river craft and flyboats were bringing in the products and manufactures of central and western Europe. Nearly a thousand of their ships were engaged in the Baltic trade. Eight hundred comprised the herring fisheries fleet. Their hardy mariners, '' commercial voyagers,'' salted their fish as soon as taken: then transported them direct from the fishing grounds to the various ports of Europe; thus '' reducing their herrings to specie before return, and proving that a fishery in such hands was worth more than the mines of Mexico and Peru.'' *

This priority in the world's commerce despite the greater advantages, natural and commercial, of other and greater nations, Raleigh assigns to these causes: the privileges that Holland allowed to '' strangers,'' or foreigners, in the '' lowness of their customs ''; the structure and '' roominess '' of the Dutch ships, which enabled them to hold much merchandise and sail under fewer hands than those of other make, and thus to carry their cargoes cheaper to and from foreign ports than any of their competitors. Thus '' the Dutch gain all the foreign freights, whilst our [the English] ships lie still and decay, or else go to Newcastle for coals.'' † So Motley found the secret of their supremacy in their advance of the contemporary world in the liberation of trade.‡

By the middle of this seventeenth century, Dutch commerce had reached its zenith. Then came the blow direct from England with the Navigation Act of Cromwell's Rump Parliament, aimed to cripple if not destroy it. The immediate effect was grievous. At the time of its passage the Dutch carrying trade with England was immense, as well from the other nations of Europe as from the more distant quarters of the globe. For nations in amity with England had been free to import what commodities they pleased and in what ships they pleased: and these were mostly Dutch.

*Motley, "New Netherlands," Vol. IV, p. 553, p. 555.

†"Observations," etc.

‡"New Netherlands," Vol. IV, p. 54.

English merchants, too, had much employed Dutch ships instead of English in bringing merchandise from the American colonies because of their lower freight rates.* Now by the English Act all this was cut off. Having little of their own produce or manufacture to export, their expansive carrying trade was severely checked. The exclusion from England and Ireland of fish other than that caught by English fishers gravely narrowed the market of the "gold mine of Holland." The English Act was followed by the issue of letters of reprisal to persons who felt themselves aggrieved at the hands of the Hollanders, and by the equipment of men-of-war which proceeded to harass Holland merchantmen. Repeatedly Dutch ships were overhauled for search, and not infrequently seized as prizes. The naval war that resulted (1652-1654) left Holland's splendid commerce lamentably reduced, with the "sovereignty of the seas" shifted to England and the proud Hollanders forced to dip their flag to British ships.

But Holland's repression was only temporary. Within less than a decade, despite the restrictions of the English Act, she had largely regained her lost ground. By 1660 her commerce again extended to every part of the globe, and she was again the "storehouse of Europe." A decade and a half later she was credited with the largest tonnage by far of any maritime nation: nearly twice as much as England which then stood second in rank. In 1691 Sir Joshua Child of England wrote, "the Dutch are gradually beating us in every quarter." †

England's maritime resources, however, were now increasing while those of Holland were declining, as at the opening of the eighteenth century the power over the seas passed permanently from Holland to England. The Dutch ceased to be the chief carriers, and London became what Amsterdam had been, the chief "emporium of the commercial world." The causes of these changes are variously found, according to the finder's point of view. A Dutch finding,

*Macpherson, Vol. II, p. 442.

†McCullagh, "Industrial History of Free Nations," Vol. II, p. 363.

in 1751, was frankly this: "the increased competition of other nations, springing up from the gradual acquisition of industrial knowledge."

In time, after weakness by wars with England and France and the consequent cost in ships and men, in the interruption of trade, and in pressure of debts, taxes were imposed on ships. Then a restrictive policy after the English pattern was adopted with respect to the Dutch colonies. To encourage the construction of ships suitable to the trade between Holland and Java, high differential duties were imposed, and a bonus offered in exorbitant freights, in favor of vessels so constructed. An early result was over-building in this class of ships. At length so many had been built that the standard freight-rates were cut one half.*

At the opening of the nineteenth century Holland's commerce was practically limited to a coasting trade. In 1824 commercial relations between the Kingdom of the Netherlands and the United States were established on principles of reciprocity. In later years, under favoring circumstances and broad enterprise, the Netherlands' shipping further expanded.

Holland now gives no preferences to her own over foreign ships in the carrying trade with her overseas possessions.

*Lindsay, "Our Navigation Laws," pp. 5, 6.

CHAPTER V

THE AMERICAN SYSTEM

THE foundation of the Navigation Code of the United States was laid at the first session of the First Congress under the Constitution, sitting in New York (March 4 — September 29, 1789), in an act approved July 20, 1789. Chapter III of that statute thus reads:

"The following duties shall be and are hereby imposed on all ships or vessels entered in the United States, that is to say: On all ships or vessels built within the said States, and belonging wholly to a citizen or citizens thereof; or not built within the said States, but on the 29th of May, 1789, belonging, and during the time such ships or vessels shall continue to belong wholly to a citizen or citizens thereof, at the rate of six cents per ton. On all ships or vessels hereafter built in the United States belonging wholly, or in part, to subjects of foreign powers, at the rate of thirty cents per ton. On all other ships or vessels, at the rate of fifty cents per ton.

"Section 2. Provided always, and be it enacted, That no ship or vessel built within the aforesaid States and belonging to a citizen or citizens thereof, shall, whilst employed in the coasting trade, or in the fisheries, pay tonnage more than once in any year.

"Section 3. And be it further enacted, That every ship or vessel employed in the transportation of any of the produce or manufactures of the United States coastwise within the said States, except such ship or vessel be built within the said States, and belong to a citizen or citizens thereof, shall, on each entry, pay fifty cents per ton.

"Section 4. And be it further enacted, That this act shall commence and be in force from and after the fifteenth day of August next."*

*United States Statutes at Large, Vol. I, p. 27.

This law was followed in September (September 1, 1789) by "An Act for Registering and Clearing Vessels, Regulating the Coasting Trade, and for other purposes,"* the first section of which defined an American vessel:

"That any ship or vessel built within the United States, and belonging wholly to a citizen or citizens thereof, or not built within the said States, but on the 16th of May, 1789, belonging, and thereafter continuing to belong wholly to a citizen or citizens thereof, and of which the master is a citizen of the United States, and no other, may be registered in manner hereinafter provided, and being so registered, shall be deemed and taken to be and denominated a ship or vessel of the United States, and entitled to the benefits granted by any law of the United States to ships or vessels of the description aforesaid."

No vessel owned in whole or in part by a citizen of the United States usually residing in any foreign country was to be deemed an American ship during the time such citizen should continue so to reside, "unless he be an agent for or partner in some house or copartnership consisting of citizens of the United States actually carrying on trade in the said States."

Masters and owners of registered ships were required to give bond not to dispose of the certificates of registry. In case of transfer through purchase or otherwise of the whole or any part or share of or interest in a registered ship, the certificate of registry must be delivered up: but if such transfer were made to a United States citizen or citizens the ship could be registered anew. A registered ship in any manner altered in form or burthen by being lengthened or built upon, or changed from one denomination to another by the mode or method of rigging or fitting, must also be registered anew.

Vessels built in the United States after August 15, 1789, and belonging wholly or in part to foreigners were required to be recorded, and their builders must make oath of their building and ownership. The change of name or of master of a recorded ship would cause it to be deemed

*United States Statutes at Large, Vol. I, p. 55.

as not recorded, unless a memorandum of such change were endorsed on the certificate of record.

Vessels of twenty tons or upward, built in the United States and wholly owned by United States citizens, or foreign-built, and, on May 16, 1789, wholly owned and thereafter continuing to be owned by such citizens, if destined from district to district, or to the bank or whale fisheries, and not registered, were to be enrolled in order to entitle them to the privileges of American vessels employed in the coasting trade or the fisheries. Vessels of this denomination and so destined, registered, or enrolled, were entitled to a license so to trade or fish for one year. Should such vessel so licensed within its year be destined to any foreign port, the master or owner must surrender his license before departing from the United States. Vessels of less than twenty tons and not less than five, employed between districts, were to have annual licenses which would exempt them from clearing and entering: the master or owner must give bond that such vessel should not be employed in any illicit commerce.

Penalties were prescribed for offences against this act; and the fraudulent use of any certificate of registry, record, or enrolment for any ship not entitled to such certificates, subjected the ship to forfeiture to the United States with her "tackle, apparel, and furniture."

A supplementary act (September 29, 1789)* extended the exemption of vessels under twenty tons from entering and clearing, to vessels of fifty tons, provided such vessels should not have on board goods other than such as were actually the produce of the United States.

At the second session of the same Congress (January 4 — August 12, 1790) the initial tonnage act of July 20, 1789, was superseded by a stricter one more sharply discriminating against foreign ships. This was the act of July 20, 1790, which, together with succeeding acts of December 31, 1792, and February 18, 1793, fully establishing the policy of discriminating duties, comprised the fundamentals of the system that practically gave to American ship-owners

*U. S. S. at L., Vol. I, p. 94.

and users a nearly complete monopoly of American commerce.

The act of 1790 * fixed the tonnage taxes thus: On ships entered in the United States from any foreign port or place, six cents per ton on American; thirty cents on those built within the United States after the date of the previous tonnage act, but belonging wholly or in part to subjects of foreign powers; and fifty cents on all others; the same rate of six cents per ton on American ships entered in a district in one State from a district in another, other than an adjoining State on the seacoast, or on a navigable river, having on board goods taken in in one State to be delivered in another, and fifty cents on foreign ships so entering. A remission of ten per cent on import duties was provided in case the dutiable articles were imported in American vessels. An act of the following August † established the system of collection of duties on imports and tonnage: classifying the ports of the country by districts, with one in each designated as a "port of entry" and others as "ports of delivery"; and restricted foreign vessels to certain of the latter.

The act of 1792 ‡ supplanted the original registry act of 1789. This more definitely fixed the principle of the American Code with the dictum that ships registered as of the United States were not to continue to enjoy the benefits and privileges appertaining to such ships "longer than they shall continue to be wholly owned, and to be commanded by a citizen or citizens of said States." American ships were redefined as those which had been registered by virtue of the previous registry act, and those which should be registered pursuant to this act, and "no other," except such as were duly qualified according to law for carrying on the coasting trade and fisheries, or one of them. Ships of the following classes were made eligible to registry under this act: those built within the United States whether before or after the 4th of July, 1776, and belonging wholly

*U. S. S. at L., Vol. I, p. 135.
†Same, p. 145.
‡Same, p. 287.

to a United States citizen or citizens, or not built within the States but on the 16th of May, 1789, belonging and continuing to belong to such citizens; and those captured in war by such citizens and lawfully condemned as prizes, or forfeited for a breach of United States laws, being wholly owned by such citizens, "and no other." A ship built within the United States prior to the named 16th of May which was not then owned wholly or in part by United States citizens was not made capable of registration by virtue of any transfer to such citizen or citizens after the passage of this act, unless by way of prize or forfeiture. The provision of the earlier law debarring from registration a ship, otherwise qualified, belonging to Americans residing in foreign countries unless they be engaged in carrying on trade with the United States, was brought over to this act, with the added exemption of those serving as consuls of the United States. Further guards were placed about certificates of registry. They were not to be sold, lent, or otherwise disposed of to any person or persons whatsoever. The fraudulent use of a certificate of registry or of record for a ship not entitled to its benefits was to subject such ship to forfeiture. So also the sale or transfer of a registered ship, in whole or in part, "by way of trust, confidence, or otherwise," to a foreigner, without making such transaction known in manner prescribed, subjected such ship to forfeiture. The oaths to be taken by owners in obtaining registry, or by a master touching his being a citizen, were defined with much particularity; while the penalties prescribed for false swearing were severe: in the case of owners, the forfeiture of the ship; of masters, a heavy fine. Severe penalties also were named for making false registers, and for government officers demanding unlawful fees.

The act of 1793 * reënacted the conditions requisite for participation in the coasting trade and the fisheries. It ordained that such ships as had been enrolled by virtue of the original act of September 1, 1789, and those of twenty tons and upward which should be enrolled after the last

*U. S. S. at L., Vol. I, p. 305.

day of May in pursuance of this act, and having a license in force, and also those of less than twenty tons, not enrolled, but having such a license, "and no other," shall be deemed American ships entitled to the privileges of ships employed in the coasting trade or fisheries. In order for enrolment under this act a ship must possess the same qualifications and comply with the same requisites as, in the foregoing act of 1792, made necessary for registering ships.

Additional acts passed in 1797 and 1799 provided further restrictions. The act of 1797 (June 27)* fixed the status of American ships captured and condemned under a foreign power and sold to foreigners. Such vessel was debarred from receiving a new registry, notwithstanding she should afterward become American property, and was to be considered to all intents and purposes a foreign vessel. The act, however, was not to prevent the owners of such ships at the time of capture, in case they regain property in them by purchase or otherwise, from claiming and receiving new registers. The act of 1799 (March 2) † replaced that of August, 1790, regulating the collection of duties.

This Code was levelled squarely against England as the English Code a century and half back had been aimed directly at Holland. But not like that to provoke war. It was really, as that was ostensibly, a stroke for commercial advantage. It was a retaliatory thrust, a giving of like for like. England had doggedly maintained the illiberal policy she had adopted upon the independence of her rebellious colonies. Every effort of the new United States to induce her to recede from it one jot had failed. Thus the new nation found her shipping handicapped at the start by the rejected mother-country, in American as well as in overseas commerce. Before the Revolution the ships of the colonies could at least trade freely with the other British possessions in America. Upon their independence, placed on the same footing as other foreign nations, the British Code was at once strenuously enforced against them, and under its operations they were largely excluded from these possessions.

*U. S. S. at L., Vol. I, p. 523. †Same, p. 627.

The hardship bore with particular severity upon the Americans' West Indian trade. They could no longer exchange their lumber, corn, fish, produce, for the British Islanders' sugar, coffee, molasses, rum. The British West Indies also suffered through these restrictions. In times of stress, when hurricanes had destroyed their own crops, their sufferings were keen because of their inability to obtain necessary food supplies direct from the States.* But even the hardships of loyal colonists could not influence a relaxation of the rule. Pitt, indeed, brought a bill into Parliament, in March, 1783, opening the West Indian ports to American ships with goods of American growth or production. But under the succeeding administration the bill was set aside; and shortly after the power of regulating the commercial intercourse between the two countries had been lodged with the King and Council. Orders in Council were issued entirely excluding American vessels from the British West Indies, and prohibiting the carriage there of some of the staple productions of the United States even in British bottoms.† In 1788, Parliament clinched the matter with an act absolutely prohibiting the importation of any American produce into any British colony except in British bottoms.‡

At the outset the policy of regulating commerce by navigation laws was adopted with the primary object of securing a monopoly of the commerce of the new nation. It is history that the unrestricted power of Congress to enact navigation laws was made a part of the Federal Constitution in place of the original provision that no such laws should be enacted without the consent of two-thirds of each branch, through a bargain between certain New England and certain Southern States: the former agreeing to the legalization of the slave trade up to the year 1808,** in exchange for the latter's agreement to the omission of the restrictive clause as to navigation acts. But between that time and the framing of this Navigation Code of 1789-1799,

*David A. Wells, "Our Merchant Marine," p. 67.

†Macpherson, p. 1406.

‡Wells, p. 68.

**The year 1800 first agreed upon by the committee. Wells, pp. 62-63.

the public temper had waxed warm against England, and so, while discriminative against foreign shipping in general, it was fashioned particularly to meet England's discriminative acts in kind.

Between the act of 1799 and the War of 1812 other supplementary acts were passed strengthening the Code in various particulars. In 1804 American vessels of non-resident naturalized citizens were debarred. The act (March 27)* excluded from registration such ships if owned in whole or in part by "any person naturalized in the United States and residing for more than one year in the country from which he originated, or for more than two years in any foreign country, unless such person be in the capacity of a consul or other public agent of the United States." The act, however, was not to be construed to prevent the registry anew of any vessel before registered, in case of a *bona fide* sale to any citizen resident in the United States; satisfactory proof of citizenship to be exhibited to the collector before the new registry is granted. An act of the same date† levied a duty of fifty cents per ton, to be donominated "light money," on all foreign vessels entering the United States ports, to be collected in the same manner as tonnage duties. In 1806 (April 18) ‡ the importation into the United States, after a given date, of certain enumerated articles from Great Britain or her colonies or dependencies, was interdicted. Also, the importation from any other foreign port or place, of any of the enumerated articles they being of the growth, produce, or manufacture of England, Ireland, or the British possessions. The penalty for infraction of this act was forfeiture of vessel and cargo, and payment of treble the value of the goods.

During the War of 1812 the provision was enacted (March 3, 1813)** that the crews of American vessels, public and private, must be wholly of American citizens, or "persons

*U. S. S. at L., Vol. II, p. 206.
†Same, p. 299.
‡Same, p. 379.
**Same, p. 809.

of colour natives of the United States." A naturalized citizen could not be so employed unless he should produce a certified copy of his naturalization paper. When in a foreign port, however, a commander or master might supply a deficiency of seamen on his ship by employing subjects of such foreign country, the employment of whom was not prohibited by the laws of that country. This act was to go into effect at the termination of the war.

By the treaty of peace in 1815, these discriminating measures were provisionally repealed; and the reciprocal policy was entered upon. The proposing act, March 3, 1815,* offered the suspension of the discriminating and countervailing duties upon the vessels of any other nation that would abolish the duties of its own so far as they operated to the disadvantage of the United States. But no immediate disposition being shown by the foreign powers, particularly England, to reciprocate with the requisite legislation, Congress proceeded by successive acts between 1817 and 1820 further to stiffen the Code by taking on the remaining foundation principles of the English Code.

Thus an act of 1817 (March 1)† decreed that "no goods, wares, or merchandise shall be imported into the United States from any foreign port or place except in vessels of the United States, or in such foreign vessels as truly and wholly belong to the citizens or subjects of that country of which the goods are the growth, production, or manufacture; or from which such goods, wares, or merchandise can only be, or most usually are, first shipped for transportation: provided, nevertheless, that this regulation shall not extend to the vessels of any foreign nation which has not adopted, and which shall not adopt, a similar regulation." Merchandise imported contrary to this act and the vessel were made liable to forfeiture. Foreign vessels were also prohibited from importing goods from one United States port to another; but they might sail from one to another provided they carried no goods between the ports other than those imported in them from

*U. S. S. at L., Vol. III, p. 224.
†Same, p. 351.

some foreign port, and that had not been unladen. The tonnage duty was fixed on vessels entering from a district in one State to a district in another, at fifty cents per ton, unless three-fourths of the ship's crew were proved Americans, or persons not the subjects of any foreign prince or state, in which case the duty was to be the regulation six cents per ton; and on vessels entering from any foreign port, fifty cents per ton, unless the officers and two-thirds of the crew were proved American citizens or not subjects of any foreign power.

An act of 1818 (April 18)* closed the ports of the United States, after a given date, against British vessels arriving from a British colony which by the ordinary laws of navigation and trade was closed against American vessels. Touching at a port which by those laws was open to American vessels was not to vary the restriction. Owners, consignees, or agents of a British vessel taking on board productions of the United States in the latter's ports, except provisions and sea-stores necessary for the voyage, must give bond not to land them in a British colony or territory from which American vessels were excluded. Forfeiture of vessel and cargo was the penalty for violation of this act.

A supplementary act in 1820 (May 15) † closed the United States ports against British vessels coming from any port or place in Lower Canada, New Brunswick, or Nova Scotia, Newfoundland, or Cape Breton, the Bermudas, Barbadoes, and the "island called Caicos," or from "any other port or place in any island, colony, territory, or possession under the dominion of Great Britain in the West Indies or on the continent of America south of the southern boundary of the United States," and not included in the previous act. The bond which was required of the owner, consignee, or agent of a British vessel clearing from a United States port with American products for exportation, that they were not to be landed in any of the British American possessions, was to be in a sum double the value of the products. Only such goods were to be imported into

*U. S. S. at L., Vol. III, p. 432.
†Same, p. 602.

the United States from the colonies and possessions named as were truly and wholly of the growth or production of those places: and these goods must be laden there, and imported thence directly into the States. Under the same date,— May 15, 1820,* — an act levied a new tonnage duty, in lieu of the then existing one, of eighteen dollars per ton on all French vessels entered in the United States.

In 1825 provisions with respect to American vessels or steamboats owned by corporations were enacted. By act of March 3,† that year, registers for vessels so owned might be issued in the name of the president or secretary of the company; and the register was not to be vacated or affected by sales of any shares of the corporation's stock. But the ownership must be all American, the last section requiring the president or secretary to swear or affirm that to the best of his knowledge and belief no part of such vessel or steamboat "has been or is then owned by any foreigner or foreigners."

Meanwhile the reciprocity proposition had been accepted in a few instances. In 1818 (July 4) the discriminating duties were suspended with respect to the commerce with Bremen, and (August 1) with Hamburg. In 1822 another move had been made for freedom of trade with the British West Indies; and for reciprocity with France. An act of May 6 that year ‡ authorized the President, when satisfied that the ports of those islands were opened to American vessels, to declare the ports of the United States opened to British vessels employed in the trade and intercourse between the islands and the United States, subject to such reciprocal rules and regulations as he might by such proclamation publish. Also, in the event of any treaty with France concerning navigation or commerce, he was authorized to suspend the discriminating duties against French vessels. In June following (the 24th) a convention of navigation and commerce between the United States and France was concluded at Washington.

*U. S. S. at L., Vol. III, p. 605.
†U. S. S. at L., Vol. IV, p. 129.
‡U. S. S. at L., Vol. III, p. 81.

In 1824 reciprocal relations were established with the Netherlands, Prussia, the Imperial Hanseatic cities of Hamburg, Lubeck, and Bremen, the dukedom of Oldenburg, Norway, Sardinia, and Russia; and by act of January 7, the several acts imposing discriminating tonnage duties were suspended in these cases. In 1827 England came in, with this proviso: "The intercourse between the United States and his Britannic Majesty's possessions in the West Indies, and on the continent of North America, shall not be affected by any of the provisions of this article (art. 2) but each party shall remain in the complete possession of its rights with respect to such intercourse."* In 1830 the President issued his proclamation opening to British vessels the trade between the British American possessions and American ports;† and an Order in Council authorized American vessels to import into the British possessions any of their domestic produce, and to export goods therefrom to any foreign countries.

In 1828 the President's proclamations issued suspending discriminating duties upon Hanoverian vessels; in 1829, upon Austrian vessels; 1835, Mecklenburg-Schwerin; 1836, Tuscany; 1837, upon Grecian vessels. Portugal came in in 1832, but in 1837 the discriminating duties were reimposed upon her vessels, she at that time maintaining a discrimination in respect to American vessels.

By 1840 twelve nations had met the reciprocity proposition, and in their ports American vessels with cargoes, whether the produce of the United States or not, were admitted on the same terms as their own. As to other nations: Great Britain was admitting American vessels into her ports on payment of the same duties and charges as British vessels, with these conditions: (1) That the vessel be American-built and American-owned, and navigated by a master and crew three-fourths American citizens; (2) That the goods composing her cargo be the produce of the United States, which, in practice, limited the import trade

*Convention of Commerce. . . August 6, 1827. Macgregor, p. 1357.

†U. S. S. at L., Vol. IV, Appendix, p. 817.

to the direct intercourse between one country and the other. The trade with the British colonial possessions was regulated by the treaty stipulations and by diplomatic arrangement. In all cases, however, some restrictions were observed, which gave an advantage in general trade to British bottoms. France was requiring the payment of a discriminating duty of five francs per ton above that paid by French vessels. No difference was made between American and French vessels in the importation of American products; but with respect to other articles a discriminating duty was exacted in favor of her own vessels. The Netherlands were favoring Dutch vessels over American in the Java trade with lower duties on importation by the former of American products.* Shortly after reciprocity treaties were effected with China, Belgium, Hanover, and Portugal.†

In 1849-51 when England abolished the restrictive features of her Code, the United States was competing sharply with England for the world's sea-carrying trade; and was building ships, then constructed almost exclusively of wood, cheaper, better, and swifter than any other maritime country, the Americans having the advantage in material and ship-building skill.‡ No relaxation in the vigor of her Navigation Code, however, was at this period made. In 1852 (act of December 23)** restrictions were put on repairs made upon foreign vessels wrecked in United States waters and afterward purchased by American citizens. It was ordained that such vessels were not to be admitted to American registry unless the repairs were equal to three-fourths of the cost of the vessel when so repaired.

Early in the Civil War (act of July 14, 1862, section 15) †† an additional tonnage duty of ten cents per ton was levied on all vessels entered from any foreign port or from any port in the United States, whether American or foreign.

*Report of U. S. State Department, April, 1840.
†Macgregor, p. 1355.
‡Wells, pp. 95, 101.
**U. S. S. at L., Vol. X, p. 149.
††U. S. S. at L., Vol. XII, p. 558.

Vessels licensed to trade between different districts, or to carry on the whale or other fisheries, and while employed therein, or plying to or from any port in Mexico, the British provinces of North America, or the West Indies, were to pay this tonnage duty only once a year. In 1864 (May 6)* a new act regulating the admeasurement of the tonnage of American vessels was passed. The same year (June 28)† the provisions of the law of March, 1813, requiring seamen on American vessels to be all American, was repealed, with the proviso, however, that the officers must be American citizens.

The end of the Civil War found the foreign trade of American vessels shattered. The best of the sea-going merchant marine had been authorized during the war to sail under foreign flags so to have the protection of foreign governments. By an act of 1866 (February 10)‡ the return of such vessels to American registry was restricted by the requirement that authorization for re-registering must in each case be under provision of an act of Congress. In July of the same year a restrictive provision was inserted in an act "further to prevent smuggling" (July 18),** as to repairs made in a foreign country upon American vessels wrecked in foreign waters. This made the equipments, or any part of them, including boats purchased for, or the expenses of repairs put upon, such vessel in a foreign country, liable, upon the first arrival in any United States port, to entry and the payment of an *ad valorem* duty of fifty per cent on the cost thereof in such foreign country: unless it were proved that the equipments were purchased or the repairs made from necessity while in the regular course of the voyage through stress of weather or other casualty.

In 1872 the policy of admitting foreign materials for building ships for the foreign trade duty free in bond was instituted, with provisions to this effect in the revenue act

*U. S. S. at L., Vol. XIII, p. 69.
†Same, p. 201.
‡U. S. S. at L., Vol. XIV, p. 3.
**Same, p. 178.

of that year (June 6).* These permitted the importation in bond of named materials which might be necessary for the construction and equipment of vessels built in the United States for the purpose of being employed in the foreign trade, including the trade between the Atlantic and Pacific ports of the United States; and upon proof that such materials had been used for this purpose they were freed from duties. Vessels receiving these benefits were inhibited from engaging in the coastwise trade more than two months in any one year except upon the payment of the duties on which the rebate had been made. All articles of foreign production needed for the repair of American vessels engaged exclusively in foreign trade were also permitted to be withdrawn from bonded warehouses free of duty. In the revenue act of 1883 (March 3)† these provisions were carried with the authority extended to build vessels "for foreign account and ownership, or for the purpose of engaging in foreign trade," but with this proviso: that the vessels built for foreign account and ownership shall not be allowed to engage in the coastwise trade of the United States. In 1884 (June 26)‡ foreign supplies, not however including equipment, needed for American vessels engaged in the foreign trade were added to the free articles. A drawback was also allowed on vessels built for foreign account wholly or partly of foreign articles on which import duties had been paid, when such vessels were exported. In the revenue act of 1894 (August 27)** the duty-free provision was expanded to include all materials and articles of foreign production necessary for the construction, the building of the machinery, and the outfit and equipment of such vessels built for foreigners and for the foreign trade. In 1909 (revenue act, August 5)†† the limit of engagement in the coastwise trade of vessels built for the foreign trade to two months in any one year, was extended to six months in a year.

*U. S. S. at L., Vol. XVII, p. 230; sec. quoted, p. 238.
†U. S. S. at L., Vol. XXII, p. 488; matter quoted, p. 491.
‡U. S. S. at L., Vol. XXIII, p. 53.
**U. S. S. at L., Vol. XXVIII, p. 509; sec. quoted, p. 548.
††U. S. S. at L., Vol. XXXVI, p. 11.

In the revenue act of 1883 the discriminating duty of ten per cent *ad valorem* in addition to the duties imposed by law, was levied on all goods imported on foreign vessels, with the proviso that this discriminating duty should not apply to goods imported in foreign vessels entitled by treaty or any act of Congress to be entered in United States ports on the same terms as those imported in American bottoms. By the act of 1884 (June 26), in lieu of the tonnage tax of thirty cents per ton per annum, a duty of three cents per ton, not to exceed in the aggregate fifteen cents per ton in any one year, was imposed at each entry of all vessels from any foreign port in North America, the West Indies, the Bahamas, the Bermudas, the Sandwich Islands, or Newfoundland; and a duty of six cents per ton, not to exceed thirty cents per ton per annum, at each entry upon all vessels from any other foreign port; with this proviso: that so much of the duty herein imposed may be suspended on vessels entered from any port in the Dominion of Canada, Newfoundland, the Bahamas, the Bermudas, West Indies, Mexico, and Central America down to and including Aspinwall and Panama, as may be in excess of the tonnage and light-house duties, or other equivalent tax or taxes, imposed on American vessels by the government of the foreign country in which such port is situated.

In 1896 (act of May 28)* the section of the Code defining an American vessel was further reshaped. It now read, and so stands at this time, as follows:

"Vessels registered pursuant to law and no others, except such as shall be duly qualified according to law for carrying on the coasting or fishing trade, shall be deemed vessels of the United States, and entitled to the benefits and privileges appertaining to such vessels; but no such vessel shall enjoy such benefits and privileges longer than it shall continue to be wholly owned by a citizen or citizens of the United States, or a corporation created under the laws of any of the States thereof, and be commanded by a citizen of the United States.

*U. S. S. at L. (Rev. Stat. sec. 4131 amended), Vol. XXIX, p. 188.

"And all the officers of vessels of the United States who shall have charge of a watch, including pilots, shall in all cases be citizens of the United States. The word 'officers' shall include the chief engineer and each assistant engineer in charge of a watch on vessels propelled wholly or in part by steam; and after the first of January, 1897, no person shall be qualified to hold a license as a commander or watch-officer of a merchant vessel of the United States who is not a native-born citizen, or whose naturalization as a citizen shall not have been fully completed."

The next year, 1897 (March 3, act "to amend the laws relating to navigation")*, the Code was relaxed with respect to American vessels owned by Americans, native or naturalized citizens, living abroad: the prohibition of registry of such vessels being repealed. Also, with respect to registered American vessels sold to foreigners and repurchased by Americans. Such vessel upon again becoming American property was made eligible to a new register unless it had been enlarged or had undergone change in build outside of the United States.

In 1897 also (act of July 24) † the discriminating duty of ten per cent *ad valorem* in addition to the duties imposed by law was levied on all goods imported in foreign vessels, "or which, being the production or manufacture of any foreign country not contiguous to the United States, shall come into the United States from such contiguous country"; this discriminating duty, however, not to apply to goods imported in foreign vessels entitled at the time of such importation by treaty or convention to entry upon payment of the same duties as required on goods coming in American bottoms. In 1898 (act of February 17)‡ further restrictions were put upon foreign vessels sailing between United States ports. No merchandise was to be transported by water, under penalty of forfeiture thereof, from one port of the United States to another, either directly, or *via* a foreign port, or for any part of the

*U. S. S. at L., Vol. XXIX, p. 687.
†U. S. S. at L., Vol. XXX, p. 151.
‡Same, p. 248.

voyage, in any other than a vessel of the United States. A foreign vessel might sail from one port to another provided she carry from the one to the other no merchandise other than that imported in her from some foreign port, and that had not been unladen.

In 1900 (February 10)* Cuban vessels, owned by citizens of Cuba, were given in ports of the United States the same rights and privileges as those of vessels of the most favored nations. In the same year (April 12)† Porto Rico vessels, owned by citizens of Porto Rico, were admitted to the benefits of the coasting trade. Eighteen days later (April 30)‡ Hawaiian vessels, owned *bona fide* by citizens of the United States or inhabitants of the Hawaiian Islands, were admitted to the coasting trade. In 1902 (March 8)** the administration of the navigation laws was put in force in the Philippines.

This Philippine act of 1902 placed foreign vessels coming into the United States from the archipelago upon the same footing as to tonnage taxes, as those coming from foreign countries, with this proviso: That until July 1, 1904, the provisions of law restricting to American vessels the transportation of passengers and merchandise directly or indirectly from one port of the United States to another port of the United States, should not be applicable to foreign vessels engaging in trade between the archipelago and the United States, or between ports in the islands. It empowered the Philippine Commission to reserve the harbor trade of the islands, by issuing licenses to engage in lighterage or other exclusively harbor business, to vessels or other craft built in the islands or in the United States, and owned by United States citizens or by inhabitants of the Philippines. In 1904 (act of April 15)†† it was ordained that the carrying trade between the islands and the United States be restricted, after July 1, 1906, to American vessels;

*U. S. S. at L., Vol. XXXI, p. 27.
†Same, p. 77; sec. quoted, 9.
‡Same, p. 141, sec. quoted, 98, p. 161.
**U. S. S. at L., Vol. XXXII, p. 54.
††U. S. S. at L., Vol. XXXIII, p. 181.

but the inter-island traffic was left unaffected. In 1906 (April 30)* the date of restriction to American vessels was advanced to April 11, 1909. The section embodying this provision was not to be construed to prohibit the sailing of a foreign vessel between ports of the United States and the archipelago, provided that she carried no merchandise other than that imported in her from some foreign port which had been specified in her manifest as for another port, and which had not been unloaded. After the same date no foreign vessel was to transport passengers between ports of the United States and of the islands, either directly or by way of a foreign port, under penalty of two hundred dollars for each passenger so transported and landed. The interisland traffic was left open until Congress should authorize the registry, as American vessels, of vessels owned in the Philippine archipelago. In 1908 the act of 1906 was repealed by a new act (April 29)† which removed the restriction on foreign vessels as to trading from one United States port to another, as far as the trade between the United States and the islands is concerned. The provisions as to tonnage taxes remained as in the preceding acts. With respect to interisland traffic, the government of the islands, "until Congress shall have authorized the registry, as vessels of the United States, of vessels owned in the Philippine Islands," was empowered to adopt from time to time and enforce regulations governing the transportation of merchandise and passengers between the archipelago's ports. The harbor business was restricted a. in the act of 1902 to American- or Philippine-built and owned craft. In 1909, in the Philippine tariff act (August 5)‡ foreign articles and materials "actually used in the construction, equipment, or repair within the Philippine Islands of vessels, their machinery, tackle, or apparel," were admitted "subject to such restrictions, conditions, or regulations as the insular collector of customs shall prescribe. Repairs to vessels, made in foreign

*U. S. S. at L., Vol. XXXIV, p. 154.
†U. S. S. at L., Vol. XXXV, p. 70.
‡U. S. S. at L., Vol. XXXVI, p. 130.

countries and documented in the islands or regularly plying in Philippine waters, were freed upon satisfactory proof that adequate facilities for such repairs were not afforded in the islands.

Such is the history in outline of the development of the American Navigation Code from its inception with the First Congress of the United States under the Constitution to this time. Though shorn by amendments and repeals from time to time of some of its more stringent clauses it has yet tenaciously retained the sterner principles of the original draft. Summarized its essential features now stand as follows:

(1) American vessels are restricted to vessels registered pursuant to law (except such as are duly qualified by law for carrying on the coasting and fishing trade), wholly owned by citizens of the United States, or by corporations organized under the laws of any of the States; and they can enjoy the benefits and privileges of vessels of the United States only so long as they continue so to be wholly owned. [Rev. Stats., sec. 4132.]

(2) The commander of an American vessel and all the officers who shall have charge of a watch, including pilots, must in all cases be citizens of the United States. No restriction upon the nationality of the crews, except in the case of crews of subsidized American ocean-mail steamships. Such crews are to be American citizens in these proportions: one-quarter during the first two years of such ship's contract; one-third, the next three succeeding years; and at least one-half during the remaining continuance of such contract. [Ocean-mail act, March 3, 1891.]

(3) Vessels entitled to American registration are: vessels built within the United States and belonging wholly to United States citizens; and vessels which may be captured in war by citizens of the United States and lawfully condemned as prizes, or which may be adjudged to be forfeited for a breach of the laws of the United States, being wholly owned by citizens and no others. [R. S., s. 4132*.]

(4) In order to the registry of any vessel the owner, or one of the owners, if more than one, must take oath as to her American build, his American citizenship, that of his associate owners if any, and of the master; and the oath must include a declaration that no subject or citizen of any foreign prince or

*The registry law of December 31, 1792: incorporated in Rev. Stats., s. 4132.

state, directly or indirectly, by way of trust, confidence, or otherwise, is interested in such vessel or in the profits or issues thereof. Also, certificate under the hand of the principal or master carpenter, by whom or under whose direction she was built, with description of her, to fix her identity, must be produced. The master, if a resident of or within the district where the application for registry is made, shall himself make oath as to his American citizenship. [R. S., s. 4132.]

(5) Registers for vessels owned by corporations are to be issued in the name of the president or secretary of the incorporated company, and are not to be vacated or affected by sales of any shares of the company's stock. Previous to granting a register the president and secretary must swear to the ownership of the vessel, without designating the names of the persons composing the company. [R. S., s. 4137; s. 4139 June 24, 1902.]

(6) No American vessel which was licensed or otherwise authorized to sail under a foreign flag and to have the protection of any foreign government during the Civil War, can be re-registered as an American vessel, or have the rights and privileges of such vessels, except under provisions of law especially authorizing such registry. [R. S., s. 4135.]

(7) A registered vessel which has been sold to a foreigner and afterward has again become American property, may have a new register unless she has been enlarged or undergone change in build outside of the United States. [R. S., s. 4165; act of March 3, 1897.]

(8) A foreign vessel wrecked in the United States and purchased and repaired by a United States citizen cannot receive a register or enrolment unless it be proved to the satisfaction of the Secretary that the repairs put upon her are equal to three-fourths of the cost of the vessel when so repaired.

(9) The sale or transfer of a registered vessel in whole or in part, by way of trust, confidence, or otherwise, to a foreigner must be made known in manner prescribed, or else such vessel is forfeited to the United States. If, however, the vessel should be so foreign-owned in part only, and it should appear to the jury before whom the trial for such forfeiture is had that any other owner, being a citizen of the United States, was wholly ignorant of such sale, transfer, or ownership, his share or interest is not subject to forfeiture: the residue only to be so forfeited. [R. S., s. 4172.]

(10) Vessels which may clear with registers for the purpose of engaging in the whale fishery are deemed to have lawful and sufficient papers for such voyage, securing the privileges and rights of registered vessels, and the privileges and exemptions of vessels enrolled or licensed for the fisheries. [R. S., s. 4339.]

(11) Vessels for the domestic commerce are to be enrolled

and licensed. Vessels of twenty tons and upward enrolled a having a license in force, or vessels of less than twenty ton which, although not enrolled have a license in force, and other, are deemed American vessels entitled to the privileg of vessels employed in the coasting trade or fisheries. [R. S. s. 4311.]

(12) In order for the enrolment of any vessel, she sha possess the same qualifications, and the same requirements i all respects shall be complied with, as are required before reg istering a vessel; and vessels enrolled, with the masters or own ers thereof, are subject to the same requirements as are pre scribed for registered vessels. [R. S., s. 4312.]

In order for the licensing of a vessel, the master must swear that he is a citizen of the United States; and if such vessel be less than twenty tons, the husband or managing owner shall swear that she is wholly the property of United States citizens. [R. S., s. 4320.]

(13) An American vessel navigating the waters of the Northern, Northeastern, or Northwestern frontiers otherwise than by sea, shall be enrolled and licensed in such form as other vessels, her enrolment and license authorizing her to be employed either in the coasting trade or foreign trade on such frontiers: no certificate of registry being required. [R. S., s. 4318.]

(14) An American vessel enrolled or licensed to engage in the foreign and coasting trade on the Northern, Northeastern, and Northwestern frontiers, or a vessel intended to be employed in such trade, procuring equipments or repairs in a foreign country, is liable, upon her first arrival in any port of the United States, to entry and the payment of an *ad valorem* duty of fifty per cent on the cost of such equipments, or any part thereof (including boats) and of such repairs. If, however, it can be shown that the equipments were purchased, and the repairs made, from necessity while on the regular course of the voyage, through stress of weather or other casualty, the duties may be refunded. But the ship's license or enrolment is not to be renewed till such equipments and repairs have been duly accounted for. [R. S., s. 3114.]

(15) Any steamboat employed, or intended to be employed, only in a river and bay of the United States, owned wholly or in part by an alien resident in the United States, may be enrolled and licensed as if she belonged to a citizen of the United States. But such alien owner, upon application for enrolment and license, must give bond in the penalty of $1,000, conditioned that the boat shall not be employed in waters other than the rivers and bays of the United States. [R. S., s. 4316.]

(16) Every vessel built in the United States and owned by an alien or aliens, in order to be entitled to the benefit of a ship built and recorded in the United States, must be recorded,

in manner prescribed, in the district in which such vessel was built, and the builder make oath; certificate of record then issues to her master. [R. S., s. 4180.]

(17) A tonnage duty of two cents per ton, not to exceed in the aggregate ten cents per ton in any one year, is imposed at each entry upon all vessels which shall be entered at any port of the United States from any foreign port in North America, Central America, the West Indies, the Bahamas, the Bermudas, or the coast of South America bordering on the Caribbean Sea, or Newfoundland; and a duty of six cents per ton, not to exceed thirty cents per ton per annum, at each entry on all vessels entered from any other foreign port; not however, to include vessels in distress or those not engaged in trade. [Act of August 5, 1909, s. 36.]

Vessels entering otherwise than by sea from a foreign port at which tonnage or light-house dues or other equivalent tax or taxes are not imposed on American vessels, are exempt from the tonnage duty of two cents. [Act of March 8, 1910.]

(18) Upon every foreign-built yacht, pleasure boat, or vessel not used or intended to be used for trade, owned or chartered for more than six months by any citizen or citizens of the United States, a sum equivalent to a tonnage tax of seven dollars per gross ton is levied, annually. Or, in lieu of this annual tax, the American owner may pay a duty of thirty-five per cent *ad valorem* on the craft, whereupon she will be entitled to the same privileges and subject to the same requirements as domestic-built yachts or pleasure boats. [Act August 5, 1909, s. 37.]

(19) Vessels belonging to citizens of the United States trading from one domestic port to another, or employed in the bank, whale or other fisheries, are exempt from tonnage tax if they be licensed, registered, or enrolled. [R. S., s. 4220.]

(20) Upon vessels entered in the United States from any foreign port or place, duties are levied as follows: On vessels built within the United States but belonging wholly or in part to subjects of foreign powers, at the rate of thirty cents per ton; on other vessels not of the United States, fifty cents per ton. On foreign vessels entered in one district from another district having on board goods taken in one district to be delivered in another, fifty cents per ton. On foreign vessels entered from any foreign port to and with which American vessels are not ordinarily permitted to enter and trade, two dollars per ton. [R. S., s. 4219; act of July 24, 1897.]

Vessels of such foreign nations as have abolished their discriminating or countervailing duties to the satisfaction of the President, are exempt from these tonnage duties. Any vessel any officer of which shall not be a citizen of the United States shall pay a tax of fifty cents per ton. [R. S., s. 4219; act of July 24, 1892.]

(21) All foreign vessels entering United States ports are to pay a duty of fifty cents per ton, denominated "light money." [R. S., s. 4225.]

(22) Except in cases provided for by treaty, no goods shall be imported into the United States from any foreign port in other than American vessels, or in such foreign vessels as truly and wholly belong to the citizens or subjects of that country of which the goods are the growth, production, or manufacture, or from which such goods can only be or most usually are first shipped for transportation; under penalty of forfeiture of ship and cargo. [R. S., s. 2497; act of July 24, 1897.] The preceding section not to apply to vessels or goods imported in vessels of a foreign nation which does not maintain a similar regulation against American vessels. [Act August 5, 1909.]

(23) A discriminating duty of ten per cent *ad valorem* in addition to the duties imposed by law, levied on all goods imported in foreign vessels, or which being the production or manufacture of any foreign country not contiguous to the United States shall come into the United States from such contiguous country; this discriminating duty not to apply to importations in foreign vessels entitled at the time, by treaty or by act of Congress, to entry on payment of the same duties as on imports by American vessels; nor to such foreign products as shall be imported from such contiguous countries in the usual course of strictly retail trade. [R. S., s. 2502; act of August 5, 1909.]

(24) No other or higher rates of duties shall be imposed on vessels of Prussia, or of her dominions, whencesoever coming, nor on their cargoes howsoever composed, than are or may be payable on vessels of the United States and their cargoes: to continue in force during the time that the equality shall in all respects be reciprocated in the ports of Prussia and her dominions. [R. S., ss. 4229, 4230.*]

(25) From Spanish vessels coming from any port in Spain or her colonies where no discriminating or countervailing duties on tonnage are levied upon American vessels, or from any other port to or with which American vessels are ordinarily permitted to go and trade, there shall be exacted in the United States ports no other or greater duty on tonnage than at the time may be exacted of American vessels. [R. S., s. 4231.†]

(26) Upon satisfactory proof being given to the President by the government of any foreign nation that no discriminating duties of tonnage or imports are levied in the ports of such nations upon American vessels, or upon the produce, manufacture, or merchandise imported in the same from the United

*Act of May 24, 1828.

†Act of March 1, 1869.

States or from any foreign country, the President may issue his proclamation declaring that the foreign discriminating duties of tonnage and impost within the United States are suspended and discontinued so far as respects the vessels of such foreign nation and the goods imported into the United States from such foreign nation, or from any other foreign country; the suspension to continue so long as the reciprocal exemption of American vessels and their cargoes shall be continued, and no longer. [R. S., s. 4228.]

(27) Whenever any foreign country whose vessels have been placed on the same footing in the ports of the United States as American vessels (the coastwise trade excepted), shall deny to any American vessel any of the commercial privileges accorded to national vessels in the harbors, ports, or waters of such foreign country, the President, upon receiving satisfactory information of the continuance of such discrimination, is authorized to issue his proclamation excluding the vessels of such nation from the exercise of such commercial privileges in the United States ports: the penalty for violation of such proclamation being forfeiture of the offending vessel. [Act June 19, 1886.]

(28) Whenever the President shall be satisfied that American fishing vessels or fishermen visiting or being in the waters at any ports of places in the British Dominions of North America are denied or abridged the enjoyments of any rights secured to them by treaty or law, or are unjustly vexed or harassed in such enjoyment, or subjected to unreasonable restrictions, regulations, or requirements in respect to such rights, or otherwise unjustly vexed or harassed in such waters; or whenever satisfied that any such fishing vessel or fisherman, having a permit under the laws of the United States to touch at any port or place in said Dominions, are denied the privileges of entering in the same manner as trading vessels of the most favored nation, or unjustly vexed or harassed in respect thereof, or prevented from purchasing supplies as are lawfully sold to trading vessels of the most favored nation; or he shall be satisfied that any other American vessels in arriving at or being in such waters are denied any of the privileges therein accorded to vessels of the most favored nation, or unjustly vexed or harassed therein: then, in either or all such cases, the President is authorized to issue his proclamation denying entrance of vessels of the Dominions into United States waters and ports (with such exceptions in regard to vessels in distress, stress of weather, or needing supplies as to him shall seem proper); also the entry of fresh or salt fish, or any other product of said Dominions, or other goods coming therefrom to the United States. [Act March 3, 1887.]

(29) Whenever, and so often, as the President shall be sat-

isfied that the passage through any canal or lock connected with the navigation of the St. Lawrence River, the Great Lakes, or the water ways connecting the same, of any American vessel or of cargoes or passengers in transit to any port of the United States, is prohibited or made difficult or burdensome by the imposition of tolls or otherwise, which, in view of the free passage through the Saint Mary's Falls Canal now permitted to vessels of all nations, he shall deem to be reciprocally unjust and unreasonable, he is empowered to suspend by proclamation to that effect for such time and to such extent (including absolute prohibition) as he shall deem just, the right of free passage through the Saint Mary's Falls Canal so far as it relates to vessels owned by the subjects of the government so discriminating against American citizens, ports, or vessels, or to any cargoes, portions of cargoes, or passengers in transit to the ports of such government whether carried in vessels of the United States or of other nations. In such cases and during such suspension tolls shall be levied. [Act July 26, 1892.]

The treaties of commerce and navigation with foreign governments, reciprocally prohibiting discriminating tonnage duty and customs duties, now number thirty,* the latest being a new one with Japan signed February 21, 1911.

The boundaries of domestic commerce reserved exclusively to American bottoms have been extended from time to time with the expansion of the United States.† As now established the coastal lines embrace the seacoasts and navigable rivers comprised in five "great coasting districts":

District I. Including all the collection districts on the seacoasts and navigable rivers between the Northern boundary of Maine and the Southern boundary of Texas.

District II. The island of Porto Rico.

District III. The districts on the coasts and rivers between the Southern boundary of California and the Northern boundary of the State of Washington.

District IV. The Territory of Alaska.

District V. The Territory of Hawaii.

The carrying trade between the Atlantic and Pacific seaboards was early treated as coastwise trade.

*Summary of the principal treaties in W. W. Bates's paper, in Report of the Merchant Marine Commission, Vol. I, pp. 252-260.

†Acts July 31, 1789; October 1, 1790; March 2, 1819; May 7, 1820; Rev. Stats., s. 4348; act May 12, 1906.

CHAPTER VI

GERMANY

GERMANY'S Maritime Code is a part of the mercantile code of 1869 revised in 1897, and in force from January, 1900. She admits to her flag merchant ships built in any country, but they must be the exclusive property of subjects of the confederation. Limited trading companies and companies of personally liable shareholders, in order to entitle their ships to nationality, must be composed of subjects and have their seats within the confederation's territory. The alienation of a share in the ownership of a national vessel involves the loss of carrying the imperial flag, but such sale can only be legally made with the consent of the co-owners. The registers of national shipping are to be kept within the States that border on the sea. A vessel can be entered only in the register of her home port, the port from which she is intended to be employed in navigation. The entry of registry is to contain the name and description of the vessel, her carrying capacity, date and place of building, names and nationality of her owner, co-owners, individuals or firms, or personally liable or limited shareholders in companies. Vessels of not more than fifty cubic metres gross tonnage are entitled to carry the flag without being registered.*

The right to make coast trading voyages is reserved to national vessels; but this right may be granted to foreign vessels by State treaty or with the consent of the council by Imperial decree. By such decree it has been given to vessels of Belgium, Denmark, Great Britain, Italy, Sweden, Norway, and Brazil. Existing treaty stipulations were also not affected by this law. These concerned Austria-Hungary,

*W. Arnold, "The new German Maritime Code." Appendix, Annex A, p. 140.

Roumania, Siam, and Tonga.* The master of a foreign vessel who, unauthorized, pursues coasting trade voyages is subject to a fine of not less than three thousand marks, and the vessel and goods to confiscation. Trade with Germany's possessions is not restricted. National vessels engaged in this trade are given no preference over foreign ships except such as are conferred by the government subsidies.

Port tonnage and light dues are not imposed by the imperial government, but such charges are levied by the authorities of the several maritime States, and vary in amounts. At the chief ports of Hamburg and Bremen these charges, imposed at every entrance of a vessel, are equivalent in the one case to a little more than eight cents per ton, and in the other, a little less than eight cents per ton.†

Domestic shipbuilding interests are favored by the free admission of foreign materials for building, repairing, or equipping sea or river vessels (but not pleasure boats for river or lake navigation), with the exception of cabin and kitchen requisites.

*Arnold, Appendix A, *note*.

†Statement of U. S. Commissioner of Navigation, Eugene T. Chamberlain, in Report of the Merchant Marine Commission, Vol. III, p. 1793.

CHAPTER VII

RUSSIA

RUSSIA restricts navigation between Russian ports, "whether situate on the same sea or on different seas," exclusively to subjects of the empire and to vessels sailing under her own flag. Thus the trade between her home ports and her overseas possessions is reserved. Vessels engaged in the coastal trade are required to be manned exclusively by Russian officers and seamen. Since 1900 the traffic between Russian European and Asiatic ports has been treated as coastwise trade.

By concessions, however, foreign vessels have been admitted to parts of the coastal reserves. For some time, by a temporary measure, the governor-general of the Pri-Amur, Eastern Siberia, was empowered to permit foreign vessels to trade between ports in regional waters, for annual periods. At the end of 1910, the number of national ships in the coasting trade being insignificant, an extension of the privilege was asked for a further period of two years. But a measure to this effect was defeated by the Duma, and instead the enforcement of the restrictive rule was renewed in those waters. The object sought by this new policy is explained to be the creation of a Russian mercantile fleet of small vessels to replace the Chinese junks which had practically monopolized the purely local trade. Special advantages to this end were offered under a law of January, 1911. This act permits, up to June 1, 1913, ships trading between Pacific coast ports and the seas adjacent thereto whether coastwise or in the foreign trade (except vessels on regular lines or those in receipt of the government subsidy) to have a crew in all departments half foreign, instead of all Russian as the Code requires. It further relaxes the rule with respect to government loans for the acquisition of seagoing wooden

or steel merchant ships newly built in Russia and of Russian materials, so that such loans may be granted temporarily up to the same date (June 1, 1913) upon wooden ships intended for navigation in the coastal waters of the Pri-Amur, whenever built and wherever the materials are from.*

Vessels admitted to Russian registry must be Russian owned. Foreign vessels built for or purchased by Russians for seaborne trade are exempted from the duty imposed on such vessels. Foreign-built ships comprise by far the greater part of the Russian mercantile steam fleet.

*(British) Diplomatic and Consular Reports, No. 4813, annual series, 1911: Report on the trade of Vladivostok and District.

CHAPTER VIII

ITALY — SPAIN — PORTUGAL

ITALY'S Code nationalizes vessels of domestic or foreign build that are owned by citizens of the kingdom, or by foreigners who have become domiciled or resident five years at least. Foreigners not domiciled nor resident may hold shares in the ownership of a national vessel up to one-third part. A ship-owning company, whether under a firm-name or with limited liability, even when the offices are situated abroad, is deemed national if any one of the partners who is liable for the whole, or who gives the concern its name, is a citizen. If the company is composed all of foreigners and has its principal office within the realm, it is classed as a foreigner domiciled. A joint stock company having its principal office within the realm and holding its general meeting therein, is considered as national. Whenever, through a change of nationality or from any other reason, a part-owner loses his Italian citizenship, he must make a declaration of such fact at the port captain's office, and if he is not a domiciled or resident foreigner, he must within a year make over the excess of the one-third part which a foreigner is permitted to hold, to an Italian citizen. The register nationalizing the ship under the Italian flag is issued by the Minister of Marine, and on the document is entered the license which allows the vessel to be sailed. The register must state the vessel's name, description, burden, her owners or part-owners, with the share in which each is interested.

The commander of a merchant ship must be a certified captain or skipper, or otherwise authorized by the terms of the Code. He must be a citizen, and must have passed a technical examination according to an established programme. Besides the captain or skipper, two-thirds at least of the

crew must be natives. Consular officials in foreign ports, however, may, in accordance with the necessities of the case, permit foreign seamen to be shipped in excess of this proportion. And recourse may also be had to foreigners for captain and mate if such action becomes necessary from the impossibility of procuring natives. Native sailors must be entered in a list of sea-faring persons or register of seamen, to become members of Italian ships' crews.*

An anchorage tax of 1.40 lire per net ton, equivalent to 27 cents, is imposed on every steamship entering an Italian port from beyond the Straits of Gibraltar. It is imposed at each entry, but it may be commuted for a year on payment of three times the tax, or 81 cents. The statement has been made that the receipts from these taxes, chiefly from foreign vessels, have produced a sum more than sufficient to pay the general navigation and construction bounties by the government to Italian shipping.†

Spain admits to registry home- and foreign-built vessels, but subjects the latter to a registry tax. Taxes are imposed also on national ships changed in build or repaired abroad. If one is lengthened in a foreign dockyard she must pay a duty on the additional tonnage upon return to a home port. If one is refitted abroad with an engine, duty must be paid on this new equipment. If she has undergone other repairs in a foreign port she pays duty on the material employed.‡

Spain reserves her coastal trade to her own flag. Before the loss of her North American colonies she gave preference to national vessels in the trade with her overseas possessions, imposing higher duties on colonial products brought to home ports in foreign bottoms than in Spanish.‡

Portugal, by a succession of decrees since 1880, opened the greater part of the trade with her overseas possessions

*Judge F. W. Raikes, "The Maritime Codes of Italy."

†U. S. Commissioner of Navigation, Eugene T. Chamberlain, in Report of the Merchant Marine Commission, p. 1798.

‡Spanish Registry Tax. In Report U. S. Commissioner of Navigation, 1903. Appendix.

to foreign vessels. A law of 1885 freed the trade between her home ports and all her possessions east of the Cape of Good Hope. Decrees of 1880, 1881, and 1892, opened the trade between various specified Portuguese possessions, and also the coasting trade in several of them. A decree of 1895 opened the trade between the home ports and Madeira.*

*British Board of Trade Reports, 1903.

CHAPTER IX

JAPAN

JAPAN'S Navigation Code is a "book" of the Commercial Code, adopted in 1898, modelled largely upon that of Germany, and in lesser degree, that of France. It applies to the merchant marine employed in voyages at sea, and is not applicable to vessels of less than twenty tons or two hundred kohu — a koku being ten cubic feet. National vessels must be owned by Japanese subjects, or by trading companies or corporations, the partners or shareholders of which are all subjects; and must be registered in the shipping register of the empire. If an alien becomes a co-owner, the ship loses her nationality. So also, if she belongs to a *société en nom collectif*, or a *société en commandite*, or a *société en commandite par actions*, and a single member is an alien. The other co-owners or other members of the company, however, have the right to buy the aliens' interest "at reasonable price" and so preserve the ship's nationality. The transfer of the shares of a *société anonyme* does not affect the vessel's nationality unless the alien transferee is appointed a director.

Japanese ships are treated as real property, and accordingly a Japanese shipowner must first register his vessel in court. This done, he must apply to the marine authorities for a registration of her nationality, exhibiting the court's record. The certificate of this record registry is his badge of authority to undertake voyages under the Japanese flag.*

For port charges and lighthouse dues the custom houses collect five sen per registered ton upon a ship's entry into port. The pilotage law, promulgated in 1899, restricts pilotage to Japanese subjects.

The system of "open ports" and "closed ports" prevails in Japan's trade with her overseas possessions.

*Yang Yin Hang, "The Commercial Code of Japan." 1911.

CHAPTER X

SUMMARY

THE Codes of most of the principal maritime nations discriminate in one way and another in favor of national shipping over foreign.

The larger number reserve the home coastal trade to the national flag exclusively or conditionally.

Those of the nations having overseas and distant possessions for the larger part open to foreign ships the carrying trade between the home ports and the possessions.

The Codes of France, Spain, Portugal, Russia, the United States, and some of the lesser countries, reserve the home coastal trade exclusively. Russia includes in her reserved coastal boundaries the trade between her European and Asiatic ports. The United States treats as coastal the carrying trade between her Atlantic and Pacific seaboards. The Codes of Germany, Belgium, Denmark, Sweden, Norway, Austria-Hungary, and Italy, open the coastal trade either unconditionally or reciprocally.

With respect to overseas and distant possessions, the Codes of Germany, Denmark, and Holland throw open the carrying trade between the home ports and the possessions without discrimination. The Code of France opens hers to foreign vessels on equal terms with national, with the exception of the trade with Algiers, which is reserved by agreement with England. The Code of Portugal opens the greater part of hers through special laws or decrees. So, also, Portugal opens the trade between various specified possessions, and the coasting trade in some of these possessions. The Code of Russia reserves the whole or the greater part of her possessions' trade. That of the United States reserves the trade with Porto Rico and the Hawaiian Islands, but opens temporarily the Philippine trade.

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